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Map 8

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THE RIGHT  
OF THE  
UNITED STATES OF AMERICA  
TO THE  
NORTH-EASTERN BOUNDARY  
CLAIMED BY THEM.

PRINCIPALLY EXTRACTED FROM THE STATEMENTS LAID  
BEFORE THE KING OF THE NETHERLANDS,

AND REVISED BY  
ALBERT GALLATIN,  
WITH  
AN APPENDIX AND EIGHT MAPS.

---

NEW YORK:  
SAMUEL ADAMS, PRINTER.

1840.

2000

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## TABLE OF CONTENTS.

	<i>Page</i>
Preface, . . . . .	v
Introduction, . . . . .	1
Terms of the Treaty, . . . . .	13
§ 1. American Line, . . . . .	13
§ 2. British Line, . . . . .	19
§ 3. Signification of the expression, "Highlands which divide Rivers," . . . . .	31
§ 4. The term "Atlantic Ocean," how far contradistin- guished from the Bay of Fundy, and from the Gulf of St. Lawrence, . . . . .	39
Intention of the Parties, . . . . .	61
§ 5. Negotiations of 1782, . . . . .	61
§ 6. Former Boundaries, . . . . .	72
§ 7. Topographical Knowledge of the Negotiators, . . . . .	83
§ 8. Recapitulation . . . . .	96
Appendix, . . . . .	105
No. I. Acts of Jurisdiction and Opinions entertained subse- quent to the year 1783, . . . . .	107
No. II. Notes on an essay in the Westminster Review, for June, 1840, signed C. B., . . . . .	127
No. III. Observations on the Report of Messrs. Featherston- haugh and Mudge . . . . .	136
No IV. Extracts from the " " " " . . . . .	165
No. V. Extracts from the Argument of the British Agent un- der the Ghent Commission, . . . . .	174
Note Explanatory of Maps, . . . . .	178
Maps, . . . . .	
1. Reduced from Map A, agreed to by both Powers, 1827.	
2. Part of Mitchell's Map, 1775, which regulated the official proceedings of the framers of the treaty of 1783. . . . .	

Maps are in the Map Room



3. Reduced from the Map annexed to the Report of Messrs.  
Featherstonhaugh and Mudge, 1840. . . . .
- Sketch of the 'Highlands claimed by Great Britain by  
Messrs. Odell and Campbell, 1821. . . . .
4. Part of Governor Pownall's Map, London, 1776. . . . .
- “ Em. Bowen's Map, London, 1775. . . . .
- “ Map of Province of Quebec, London, 1776. . . . .
- “ Map of Northern British Colonies in America,  
from American Military Atlas, London, 1776.

*Maps are in the Map Room*

## PREFACE.

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THE British Government appointed Commissioners, in the year 1839, for the purpose of surveying, 1st, the line heretofore considered, on the part of Great Britain, as the north-eastern boundary of the United States, namely, that which extends from the source of the Chandiere to Mars Hill; 2dly, the line from the source of the Chandiere to the point at which a line drawn from that source to the western extremity of the Bay of Chaleurs, intercepts the due north line; 3dly, the line claimed by the Americans from the source of the Chandiere to the point at which they make the due north line end.

The Commissioners have performed the duties imposed on them partially and as far as the short time employed in the exploration permitted. And the Government of the United States has lately appointed Commissioners for the same purpose, the result of whose proceedings can hardly be expected before the year 1841.

It was principally, if not exclusively, the "nature and configuration of the territory in dispute," that the British Commissioners were directed to investigate. It is well known, that the United States contend that the term "highlands which divide rivers," used in the treaty, does not imply either a mountainous character or an absolute but only a relative elevation. But Great Britain has an undoubted right to ascertain all the facts concerning the topography of the country, the knowledge of which is, in her opinion, important, or may be of any use for a correct decision of the question. And had the Report of the British Commissioners been confined to that object, nothing more would at most have been necessary, on the part of the United States, than the exploration which the Government has lately ordered. But the Appendix and a few pages only of the Report of the Commissioners relate to that investigation. The bulk of the Report is devoted to a discussion apparently of the merits of the case; and its conclusions are of the most general nature; pronouncing in decisive terms, that the claims of Great Britain to the whole of the disputed territory are founded in justice, *and are in plain accordance with the 2d Article of the Treaty of 1783*, and with the physical geography of the country; and that the *line which is claimed on the*

*part of the United States, (a)* as the line of Highlands of the Treaty of 1783, does not pass nearer than from 40 to 50 miles of the north-westernmost head of Connecticut River, and therefore has no pretension to be put forward as the line intended by the Treaty of 1793.

It might be inferred, from the general tone of the Report, and from the manner in which they are announced, that those conclusions, which declare, that the British line does in every respect, and that the American line does not fulfil the conditions of the Treaty, were deduced from the argumentative part of the Report. The inference would be altogether erroneous.

The fundamental objection against the British line is that, for one hundred and twenty miles or about three fifths of its whole length, it divides or can divide no other rivers but the waters of the Penobscot from those of the St. John, neither of which empties itself into the River St. Lawrence; whilst the treaty expressly describes the boundary as being from its beginning on the due north line, to the source of the Connecticut, along the highlands which divide the rivers that empty themselves into the river St. Lawrence from those which fall into the Atlantic Ocean. There is not in the Report even an allusion to that main question on which the two Governments are at issue.

The only reason heretofore assigned why, if the boundary claimed by Great Britain was that which the negotiators of the treaty contemplated, they described it in terms contradictory of their presumed intention, is their supposed ignorance of the topography of the country. The United States contend that the knowledge which the negotiators had of that topography was amply sufficient to enable them to describe without difficulty, and with the utmost precision, the boundary now claimed by Great Britain, had such been their intention; and that the boundary actually described in the treaty corresponds precisely with that claimed by America. This is another of the great questions at issue; and in that respect, as applied to the British line, the United States cannot complain much of the Report. For although the Commissioners say in conclusion, that *they have found* a line of highlands agreeing with the treaty, yet they strenuously assert in the body of the Report, that those very highlands were well known, not only at the date of the treaty, but more than twenty years before: which renders the language of the treaty still more inexplicable. However that may be, the Report does not disprove the assertion, on the part of the United

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(a) It is well known, that the line, from the source of the Connecticut to the north-western sources of the Penobscot, is common to the United States and to Great Britain, being on highlands acknowledged by both parties. The line here alluded to, which passes 50 miles of the source of the Connecticut, and is called, the line claimed on the part of the United States, is not and has never been claimed by them.

States, that the negotiators might have described with precision, if so intended, the boundary claimed by Great Britain ; nor is there any satisfactory reason assigned, why it was not done.

On the part of Great Britain, two principal objections are raised against the American line. The first is, that the Rivers Ristigouche and St. John are not, in that clause of the Treaty which relates to the division of Rivers, to be taken as Rivers that fall into the Atlantic Ocean. That important question is not alluded to in the Report.

The other objection is, that the "highlands which divide Rivers" implies a considerable and conspicuous elevation and a mountainous character ; and that the British line unites and that the American line wants those properties. The question of fact, which was the proper object of the investigation committed to the care of the Commissioners, is the subject of the Appendix to the Report, and is treated in the Report itself. But it is silent on the previous question, viz : whether the term above mentioned does, as is contended for on the part of Great Britain, or does not, as the United States maintain, imply such elevation and mountainous character. (b)

It is manifest, from the silence preserved in the Report, on all the true questions at issue between the two Governments, and on which depends the final decision, that the Commissioners considered those questions as having been definitively settled in favour of Great Britain by her former agents ; and that the general conclusions annexed to the Report are deduced from the arguments of those agents, and not from those contained in the Report. Independent of the Barometric observations and other facts actually ascertained by the Commissioners in the course of their exploration, the Report, divested of its incautious and reprehensive passages, and viewed under its most favourable aspect, is at most but a subsidiary document. In the argumentative part of it, it treats only of subordinate topics, many altogether irrelevant, and none that could, even if proved, affect the ultimate decision of the difference between the two Countries. (c) Nor has the Report even the merit of originality with respect to those subjects which it does discuss, as will clearly appear by reference to the British statements laid before the King of the Netherlands. (d)

Those statements of the case, on the part of both Great Britain and the United States, two on each side, though printed, have never been

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(b) Those four main questions are respectively discussed in the 2d, 7th, 4th, and 3d Sections of the following essay.

(c) See Nos. III and IV of the Appendix to this essay.

(d) The reader cannot refer to those statements ; but the substance will be found in the 5th and 6th Sections, and in No. I of the Appendix to this essay ; which contain hardly any thing more than had been written and laid before the King of the Netherlands more than ten years ago.

published. It would seem as if both Governments, subsequent to the award, had, from mutual forbearance, thought it wiser not to commit themselves further than had been done, not to agitate the public mind by a publication of those documents, and rather to apply their endeavours to the preservation of peace, and to devise some new mode of amicably settling the difference. However well disposed in both respects and successful in attaining the first object, they had made but little progress towards the other. The case is now altered. A document has been brought forth, laid before Parliament and published, which, notwithstanding its high pretensions, gives but a very imperfect view of the subject, treats only of subordinate points, does not discuss any of the great questions at issue, and yet which from the boldness of its conclusions and the sanction under which it has appeared, was calculated to produce and has made, in England at least, an impression unfavorable to the rights and to the acts of the United States. It appears just and necessary that something should be done that may counteract that effect, and show at least, that the grounds on which they rest their claim are neither light and frivolous, nor certainly to be shaken by either the discoveries or the arguments of the Report.

Having been, jointly with Mr. Preble, one of the agents who prepared the Statements laid before the King of the Netherlands, the subject was familiar to me. I have had little more to do, than to blend the two Statements into one, to alter accordingly the arrangement, to abridge as much as was consistent with an examination of all the arguments adduced by the other Party, and to revise the whole, with such additions only, as new suggestions however singular and some unfounded imputations seemed to require. I have tried to indicate at least all the arguments and objections of the British agents; and if I have omitted any, the omission is quite involuntary: for one of my objects was to make the people of the United States acquainted with the substance of all that had been suggested in opposition to the American claim. Yet, this paper is what it purports to be, an argument in behalf of the United States: and in order to have a fair and complete view of the subject, either the former British Statements should be published, or some other document be substituted, which should discuss the true questions at issue, and exhibit the British claim with perspicuity and in the most favorable view of which it is susceptible.

I am sensible that nothing coming from me will alter the opinions adverse to the American claim, which may be entertained in England. The utmost that can be expected is that those into whose hands this essay may fall, may be induced to investigate the subject and to judge for themselves. But if the claim of the United States is, according to our convictions, founded in strict justice, it is to the British Cabinet itself,

and without any intermediary, that the appeal must be made. In all international differences, the people almost always take it for granted that the foreign Government is in the wrong, and follow the impulse given by their own. The feeling is quite natural, generally proper, and in this instance, common to both countries.

The fact, that the Secretary of State for foreign affairs did lay before the Parliament of Great Britain the report of the late commissioners, affords strong evidence, that that distinguished statesman, amidst his more important and overwhelming avocations, had not found time thoroughly to investigate the merits of the case and to judge for himself. This is not at all surprising: I could quote the instance of an intelligent and enlightened Secretary of State of the United States, much less burthened with official duties than a British Minister, who, on this very question, did, subsequent to the award, propose to substitute, for the due north line, another which would have given to Great Britain the greater part, if not the whole of the disputed territory. Why the proposal was made, and why it was not at once accepted, cannot be otherwise accounted for, so far at least as regards the offer, than by a complete ignorance of the whole subject.

In the various negotiations with Great Britain in which I have been employed, there was always an earnest desire to remove subjects of contention, and to promote friendly relations; on almost all questions a conciliatory disposition; nothing at any time, that could shake my confidence in the sincerity and good faith of that government. And I do believe that it would do justice, if it was once satisfied that justice was due.

It is earnestly to be wished, that some one of the members of the enlightened British Cabinet would take the trouble, to examine thoroughly and in all its tedious details that vexed question, not omitting a search in the archives of the state office, of the instructions and actual intentions of the British negotiators in 1782 and 1783. It seems to me almost impossible that, in a case in which, as I believe, there is no British jury or British chancellor who would not decide in favor of America, the result of an attentive ministerial inquiry after truth should not be the same.

Yet we may mistake our convictions for a demonstration of truth: to such error both parties are equally liable; and should the government of Great Britain still remain unsatisfied, the investigation might at least lead to a nearer approximation towards a settlement, and could under no circumstance place the two countries in a worse situation than they now are.

But under any circumstances whatever, the question must be settled. It would be the height of madness and of wickedness to come to a rup-

ture, and for such an object. Both governments are animated by a sincere and earnest desire to preserve peace. It is not believed that the English nation wishes a war with the United States. It may be confidently asserted that, with an entire conviction of their right to the territory in question, there is not a more universal feeling amongst the people of America, every where and without distinction of political parties, than that of the preservation of peace, above all of peace with Great Britain. It is the duty of the two governments speedily to devise and to adopt the means necessary for effecting the object; and I believe that means may be found.

The government of the United States has not been consulted on the subject of this publication. And it is hoped that this full exposition of the claim of the United States was not only proper at this time, but may not be without its use in promoting a satisfactory settlement of the question.

## INTRODUCTION.

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THE frequent references made in the discussion of the north-eastern boundary of the United States, to various treaties and other public documents, render it necessary to give in the first place extracts of those documents, together with some explanatory notes.

On the 8th of November, 1603, Henry IV. King of France, appointed Pierre de Monts, his lieutenant-general, in the country, territories, coast and limits of Cadie, (la Cadie,) since called Acadie or Acadia, commencing from the fortieth degree to the forty-sixth.

By a charter of the 10th of September, 1621, James I. granted to Sir William Alexander a certain territory, under the name of "Nova Scotia," with the following boundaries: (a)

"Beginning at Cape Sable, in forty-three degrees north latitude, or thereabout, extending thence westwardly along the sea-shore, to the road commonly called St. Mary's Bay; thence towards the north by a direct line crossing the entrance or mouth of that great ship road, which runs into the eastern tract of land between the territories of the Souriquois and of the Etchemins, (Bay of Fundy,) to the river commonly called St. Croix, and to the most remote spring or source, which, from the western part thereof, first mingles itself with the river aforesaid; from thence, by an imaginary direct line, which may be conceived to stretch through the land, or to run towards the north, to the nearest road, river or spring emptying itself into the great river de Canada; (River St. Lawrence;) and from thence proceeding eastwardly along the sea-shores of the said river de Canada, to the river, road, port, or shore, commonly known and called by the name of Gachepe or Gaspe; and thence south-eastwardly to the islands called Baccaleos or Cape Breton, leaving these islands on the right and the Gulf of the said river de Canada or of the great ship road and the lands of Newfoundland, with the islands to the same pertaining, on the left; and thence to the head land or promontory of Cape Breton aforesaid, lying near the latitude of forty-five degrees, or thereabout; and from the said promontory of Cape Breton, towards the south and west, to Cape Sable aforesaid, where the perambulation began, . . . all which lands aforesaid,

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(a) This translation, from the original Latin, is the same which was inserted in the first American statement laid before the King of the Netherlands.



shall at all times hereafter be called and known by the name of Nova Scotia, or New Scotland, in America." (b)

[The western boundary thereby assigned to Nova Scotia differs from the eastern boundary of the United States, as described by the treaty of peace of 1783, in the following particulars.

1st. The western source of the River St. Croix was intended by Sir William Alexander's charter; but by the treaty of 1783, the said river, from its mouth to its source, without particularly designating which source, is made the boundary: and this has been decided to be the river from its mouth to the source of its north branch.

2d. The line from the source of the River St. Croix, is, according to the charter, to run *towards* the north; (versus septentrionem;) by the treaty, it must run due north, or directly north.

3d. The said line, by the charter, extends to the River St. Lawrence, and, by the treaty, to the highlands dividing the rivers, &c.]

On the 3d of April, 1639, Charles I. granted to Ferdinand Gorges, by the name of Province or County of Maine, a territory bounded on the west by Pascataway Harbor and the River Newichewanocke, (Piscataqua River,) to the furthest head thereof, and thence one hundred and twenty miles north-westwards, extending from Pascataway Harbor. north-eastwards, along the sea coast to Sagadahock, (the River Kennebec below the confluence of the River Androscoggin,) and up the River thereof to Kynybecky River, and, through the same, to the head thereof, and into the land north westwards one hundred and twenty miles from the mouth of Sagadahock; &c.

This grant was purchased in the year 1674, by the colony of Massachusetts; and, although the name of Maine has since been extended to the country, eastwardly, as far as the Boundaries of Nova Scotia, the ancient Province of Maine, according to the aforesaid original grant, was bounded on the east by the River Sagadahock or Kennebec.

On the 12th of March, 1663, Charles II. granted to his brother James, Duke of York, "all that part of the main land of New England, beginning at a certain place, called or known by the name of St. Croix, adjoining to New Scotland in America; and from thence extending along the sea coast, unto a certain place called Pemaquin or Pemaquid, and so up the river thereof to the furthest head of the same as it tendeth northwards, and extending from thence to the river of Kennebec, and so up, by the shortest course, to the river of Canada, northwards." This last described territory, to which the name of Maine has since extended, is that which, in ancient maps, is called Sagadahock; and it will be perceived that it extended northward to the River St. Lawrence.

Great Britain having, by the tenth article of the treaty of Breda, concluded on the 31st of July, 1667, agreed to restore to France the country called Acadia, situated in North America, which had formerly been in the most Christian King's possession, the Duke of York obtained from Charles II. a subsequent confirmation of his grant, bearing date the 29th of June, 1674. The territory was afterwards governed under the authority of the Duke of York, and, at his accession to the throne, merged in the crown.

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(b) This grant was confirmed by a subsequent Charter of Charles I. dated 12th of July, 1625.

The three above described territories, Nova Scotia, the ancient Province of Maine, and Sagadahock, or the Duke of York's Grant, were, by the last Charter of Massachusetts granted on the 7th of October, 1691, by William and Mary, annexed to the then Colony of Massachusetts' Bay, as will appear by the following extracts of the said Charter.

"We . . . . will and ordain that the territories and colonies commonly called or known by the names of the Colony of the Massachusetts' Bay and Colony of New Plymouth, (these forming the now State of Massachusetts, or Massachusetts proper,) the Province of Main, the Territory called Accadia or Nova Scotia, and all that tract of land lying between the said Territories of Nova Scotia and the said Province of Main, be united, erected, and incorporated . . . . . by the name of our Province of Massachusetts' Bay, in New England; . . . . and do give and grant unto our said subjects the inhabitants of our said Province or Territory of the Massachusetts' Bay, and their successors, all that part of New England, in America, . . . . and all the lands and hereditaments whatsoever, lying within, (here the limits of Massachusetts proper, and of the ancient Province of Maine are described,) and also the lands and hereditaments lying and being in the Country or Territory commonly called Accadia, or Nova Scotia; and all those lands and hereditaments lying and extending between the said Country or Territory of Nova Scotia, and the said River of Sagadahock, (the Eastern Boundary of ancient Maine,) or any part thereof; . . . . . Provided also that it shall and may be lawful for the said Governor and General Assembly, (of the Province erected by this Charter,) to make or pass any grant of lauds lying within the bounds of the colonies formerly called the Colonies of the Massachusetts' Bay, and New Plymouth and Province of Maine, in such manner as heretofore they might have done by virtue of any former Charter or letters patents; which grants of lands within the bounds aforesaid, we do hereby will and ordain to be and continue forever of full force and effect without our further approbation or consent; and so as nevertheless, and it is our royal will and pleasure that no grant or grants of any lands lying or extending from the River of Sagadahock to the Gulf of St. Lawrence and Canada Rivers, and to the main sea northward and eastward, to be made or passed by the Governor and General Assembly of our said Province, be of any force, validity, or effect, until we, our heirs and successors shall have signified our or their approbation of the same."

[It must be observed that according to that Charter, both Nova Scotia and the territory between it and the River Kennebec (or Sagadahock) extended on the north as far as the River St. Lawrence: and that grants of land made in either by the Governor and General Assembly of the province, required the approbation of the King; so that, in order to be valid, such grants required both his consent and that of the Provincial Government.

No other reason can be assigned for having thus annexed to the Province of Massachusetts, Nova Scotia, or Acadia, which had been restored to France by the treaty of Breda, than the state of war existing between the two countries, in the year 1691, when that Charter was granted. Great Britain, however, agreed by the treaty of Ryswick of 20th September, 1697, to restore to France "all countries, islands, fortss and colonies, wheresoever situated, which the French did possess before

the declaration of war." Acadia, or Nova Scotia, being clearly embraced by those expressions, and being thus severed from the British Dominions, the clause of the Massachusetts Charter, which annexed that territory to Massachusetts, was virtually repealed, and became a nullity. The understanding of the British Government of the extent of that restitution, will be found in the following sentence of a letter from the Lords of the Board of Trade, dated 30th October, 1700, to the Earl of Bellamont, the Governor of Massachusetts, viz: "as to the Boundaries, we have always insisted, and shall insist upon the English right, as far as the River St. Croix."]

France having, by the 12th article of the treaty of Utrecht, of 1713, ceded to Great Britain "All Nova Scotia or Acadie, with its ancient Boundaries," that Province was not reannexed to Massachusetts' Bay, from which it had been severed by virtue of the treaty of Ryswick: but it was erected by the British Government into a separate Province. Richard Phillips was its first Governor, and he is, in his commission, dated the 11th of September, 1719, designated as "Captain General and Governor in Chief in and over our Province of Nova Scotia or Acadie in America," without any description of the limits of the Province. The same style, and without any designation of its boundaries, is preserved in the subsequent commissions of the Governors of Nova Scotia, till the year 1763.

The territory lying between Nova Scotia and the river Sagadahock (or Kennebeck) remained a part of Massachusetts' Bay according to its charter. A question arose, however, some years afterwards, in that respect, which having been referred to the law officers of the Crown, (the attorney and solicitor general,) they gave it as their opinion: (dated August 11th. 1731 :) That all the tract of land lying between the rivers of Kennebec and St. Croix, is granted by their charter to the inhabitants of the said Province; that the rights of Government granted to the said Province extend over this tract of land:—That it does not appear that the inhabitants of the said Province have been guilty of any such neglect or refusal to defend this part of the country, as can create a forfeiture of that subordinate right of Government of the same, or of such property in the soil, as was granted to them by the said charter. That if the Province had incurred any forfeiture in the present case, no advantage could be taken thereof but by a legal proceeding, by scire facias to repeal their charter, or by inquisition finding such forfeiture: That the said tract of country, not having been yielded by the crown of England to France by any treaty, the conquest thereof by the French created (according to the law of Nations) only a suspension of the property of the former owners, and not an extinguishment of it: and that upon the reconquest of it, by General Nicholson, all the ancient rights, both of the Province and of private persons, subjects of the crown of Great Britain, did revive and were restored *jure postliminii*. Whence they conclude that the said charter still remains in force, and that the crown hath not power to appoint a particular Governor over this part of the Province, or to assign lands to persons desirous to settle there; nor can the Province grant these lands to private proprietors without the approbation of the crown, according to the charter.

[In Mitchell's map, published in the year 1755, the river St. Croix, and a due north line from its source to the river St. Lawrence, are, ac-

cordingly, made the boundary between Nova Scotia and New England; embracing, under this last designation, the eastern part of Massachusetts, by the name of Sagadahock. Both Nova Scotia and New England are, in that map, published with the approbation of the Board of Trade, bounded to the north by the river St. Lawrence. And that river continued, accordingly, to be the northern boundary of both, till the 7th of October, 1763; when, Canada, and all the possessions claimed by France in that quarter, having, by virtue of the treaty of peace of February, 1763, been definitively ceded by her to Great Britain, His Britannic Majesty issued a proclamation establishing new Governments, and, amongst others, that of Quebec.]

The boundaries of that Government were, by the said proclamation, fixed as follows. "Bounded on the Labrador Coast by the river (c) St. John; and from thence, by a line drawn from the head of that river, through the Lake St. John, to the south end of the Lake Nipissing, from whence the said line, crossing the river St. Lawrence and the Lake Champlain, in forty-five degrees of north latitude, passes along the Highlands which divide the rivers that empty themselves into the said river St. Lawrence from those which fall into the sea, and also along the north coast of the Bay des Chaleurs and the coast of the Gulf of St. Lawrence, to Cape Rosiers; and from thence, crossing the mouth of the river St. Lawrence, by the west end of the Island of Anticosti, terminates at the aforesaid river St. John."

[The Highlands therein designated, being assigned as the southern boundary of the Province of Quebec, became the northern boundary of Nova Scotia; the north west corner of which, instead of being, as heretofore, on the bank of the river St. Lawrence, was thereby placed on the said Highlands.]

The boundaries of the Province of Quebec were enlarged in another quarter by the act of Parliament of 14th Geo. III. Chap. 53. (1774) commonly called the Quebec act. But those adjacent to Nova Scotia and Massachusetts were, by that act, defined in words nearly similar to those used in the proclamation of 1763, viz:

"That all the Territories, Islands, and Countries in North America, belonging to the crown of Great Britain, bounded, on the south, by a line from the Bay of Chaleurs along the Highlands which divide the rivers that empty themselves into the river St. Lawrence from those which fall into the sea, to a point in forty-five degrees of northern latitude, on the eastern bank of the river Connecticut, keeping the same latitude directly west through the Lake Champlain, until, in the same latitude, it meets the river St. Lawrence, from thence, &c. . . . be, and they are hereby, during his Majesty's pleasure, annexed to, and made part and parcel of the Province of Quebec, as created and established by the said Royal Proclamation, of the 7th of October, 1763."

"Provided always, that nothing herein contained, relative to the boundary of the Province of Quebec, shall, in any wise, affect the boundaries of any other Colony."

Notwithstanding the opinion expressed in the letter from the Board of Trade to the Governor of Massachusetts, of 30th October, 1700, of

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(c) Not the river of the same name which falls into the Bay of Fundy, but the smaller stream which, from the north, falls into the mouth of the river St. Lawrence.

the extent of the cession made by the treaty of Ryswick; and notwithstanding the opinion of the law officers of the Crown, of August 11th, 1731; the attempt to dispute the right of Massachusetts, at least to the country lying east of Penobscot, was again renewed immediately after the treaty of peace between Great Britain and France of 1763.

The Province of Massachusetts having made a grant to Governor Bernard, of an Island lying east of the river Penobscot, and which required the confirmation of the Crown; the Board of Trade, in a letter of March 11th, 1763, to the Governor, say:

"It may appear proper to observe to you, that the doubt conceived upon the claim of the Province of Massachusetts, is not founded upon the allegation that the lands to the east of Penobscot, were not in possession of the Crown at the time of granting the charter, but upon the operation which the treaties of Ryswick and Breda, (by which treaties, this tract of country was ceded to France,) should be admitted to have had upon the charter itself.

"We cannot take upon us, at present, to say how far all future consideration of this question is precluded by the order of Council, grounded upon the opinion of the attorney and solicitor general in 1731; this is a delicate point which should be reserved till the deed shall come regularly before us; and, in the mean time, we cannot think it expedient to advise any conditional grant whatever of this Island."

On the same ground, saving clauses were annexed to the description of the boundaries of the Province of Nova Scotia, inserted in the commission of Montague Wilmot, as Governor of Nova Scotia, which bears date the 21st of November, 1763, in the following words, viz: Our Province of Nova Scotia, and which we have thought proper to restrain and comprise within the following limits, viz: To the northward our said Province shall be bounded by the southern boundary of our Province of Quebec as far as the western extremity of the Bay des Chaleurs, . . . . . and to the westward, "although our said Province has anciently extended, and does of right extend as far as the River Pentagoet or Penobscot," (d) it shall be bounded by a line drawn from Cape Sable across the entrance of the Bay of Fundy to the mouth of the River St. Croix, by the said River to its source, and by a line drawn due north from thence to the southern boundary of our Colony of Quebec.

[The object of that attempt is explained in a letter from Jasper Mauduit, agent in England for Massachusetts' Bay, to the General Court of that Province, dated 9th June, 1764. In that letter the Agent states from authority, confirmed by a subsequent interview with Lord Hillsborough, that if the Province will pass an act empowering their agent to cede to the Crown all pretence of right or title they may claim under their Charter, to the lands on the River St. Lawrence, destined by the Royal Proclamation to form part of the Government of Quebec, the Crown will then waive all further dispute concerning the lands as far as St. Croix, and from the Sea Coast of the Bay of Fundy, to the Bounds

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(d) The words here quoted, are, however, omitted in all the subsequent Commissions, including that of John Parr, (dated 29th July, 1782, who was Governor at the date of the treaty of 1783.) The Boundaries prescribed are the same in all the Commissions.

of the Province of Quebec: reserving only to itself the right of approbation, as before."

Mr. Mauduit urges an acquiescence with that proposal, principally on the ground, that the *narrow* tract of land which lay beyond the sources of all the Rivers of Massachusetts, and was watered by those which run into the River St. Lawrence, could not be an object of any great consequence to Massachusetts; though it was absolutely necessary to the Crown, to preserve the continuity of the Government of Quebec.]

In the course of the negotiations which terminated in the treaty of peace of 1783 between the United States and Great Britain, provisional articles were agreed between the plenipotentiaries, subject to the consideration of his Britannic Majesty, but which were rejected. Amongst these, was the following in relation to boundaries, viz:

"The said states are bounded north by a line to be drawn from the north-west angle of Nova Scotia along the highlands, which divide those rivers that empty themselves into the River St. Lawrence from those which fall into the Atlantic, to the north-westernmost head of Connecticut River; thence down along the middle of that river to the forty-fifth degree of north latitude, and thence due west in the latitude forty-five degrees north from the Equator, to the north-westernmost side of the River St. Lawrence, or Cataraguy; thence straight to the Lake Nipissing, and thence straight to the source of the River Mississippi; west, by a line to be drawn along the middle of the River Mississippi, to where the said line shall intersect the thirty-first degree of north latitude; south, by a line to be drawn due east from the termination of the line last mentioned, in the latitude of thirty-one degrees north of the Equator, to the middle of the River Apalachicola, or Catabouche; thence along the middle thereof to its junction with the Flint River; thence straight to the head of St. Mary's River; thence down along the middle of St. Mary's River to the Atlantic Ocean; and east, by a line to be drawn along the middle of St. John's River from its source to its mouth in the Bay of Fundy; comprehending all islands within twenty leagues of any part of the shores of the United States, and lying between lines to be drawn due east from the points where the aforesaid boundaries between Nova Scotia on the one part, and East Florida on the other, shall respectively touch the Bay of Fundy and the Atlantic Ocean."

*Paris, 8th October, 1782.*

A true copy of which has been agreed on between the American Commissioners and me, to be submitted to His Majesty's consideration.

(Signed)

R. OSWALD.

Alteration to be made in the treaty, respecting the boundaries of Nova Scotia, viz:

"East, the true line between which and the United States shall be settled by Commissioners, as soon as conveniently may be after the war."

The preliminary articles of peace, finally agreed on, 30th November, 1782, as made public at the time, are the same with those of the definitive treaty of 1783. But, to those preliminary articles of 1782, the following secret article, bearing the same date, was added. It was omitted

in the definitive treaty of 1783, Florida having in the mean while been ceded to Spain by Great Britain.

"It is hereby understood and agreed that in case Great Britain, at the conclusion of the present war, shall recover or be put in possession of West Florida, the line of north boundary between the said Province and the United States shall be a line drawn from the mouth of the River Yassous, where it unites with the Mississippi, due east to the River Apalachicola."

The preamble of the treaty of peace, concluded the 3d day of September, 1783, between the United States and his Britannic Majesty, expresses the mutual wish, to establish such a beneficial and satisfactory intercourse between the two countries, upon the ground of reciprocal advantages and mutual convenience, as may promote and secure to both perpetual peace and harmony. And the boundaries of the United States are defined in the following words, viz:

"ARTICLE 1. His Britannic Majesty acknowledges the said United States, viz: New Hampshire, Massachusetts' Bay, Rhode Island and Providence plantations, Connecticut, New-York, New Jersey, Pennsylvania, Delaware, Maryland, Virginia, North Carolina, South Carolina, and Georgia, to be free, sovereign, and independent states; that he treats with them as such, and for himself, his heirs and successors, relinquishes all claims to the government, property, and territorial rights of the same, and every part thereof.

"ARTICLE 2. And that all disputes which might arise in future on the subject of the boundaries of the said United States may be prevented, it is hereby agreed and declared, that the following are and shall be their boundaries, viz: from the north-west angle of Nova Scotia, viz: that angle which is formed by a line drawn due north from the source of the St. Croix River, to the Highlands, along the said Highlands which divide those rivers that empty themselves into the River St. Lawrence, from those which fall into the Atlantic Ocean, to the north-westernmost head of Connecticut River; thence, down along the middle of that river, to the forty-fifth degree of north latitude; from thence, by a line due west on said latitude, until it strikes the River Iroquois or Cataraquy; thence, along the middle of said river, into Lake Ontario, through the middle of said Lake, until it strikes the communication by water between that lake and Lake Erie; thence, along the middle of said communication into Lake Erie, through the middle of said lake, until it arrives at the water communication between that lake and Lake Huron; thence, along the middle of said water communication into the Lake Huron; thence, through the middle of said lake, to the water communication between that lake and Lake Superior; thence, through Lake Superior, northward of the Isles Royal and Philipeaux, to the Long Lake; thence, through the middle of the said Long Lake, and the water communication between it and the Lake of the Woods, to the said Lake of the Woods; thence, through the said lake, to the most north-western point thereof; and from thence, on a due west course, to the River Mississippi; thence, by a line to be drawn along the middle of the said River Mississippi, until it shall intersect the northernmost part of the thirty-first degree of north latitude. South, by a line to be drawn due east from the determination of the line last mentioned, in the latitude of thirty-one degrees north of the Equator, to the middle of the River

Apalachicola or Catahouche; thence, along the middle thereof, to its junction with the Flint River; thence, straight to the head of St. Mary's River; and thence, down along the middle of St. Mary's River, to the Atlantic Ocean. East, by a line to be drawn along the middle of the River St. Croix, from its mouth in the Bay of Fundy, to its source; and, from its source, directly north, to the aforesaid Highlands which divide the rivers that fall into the Atlantic Ocean from those which fall into the River St. Lawrence: comprehending all islands within twenty leagues of any part of the shores of the United States, and lying between lines to be drawn due east from the points, where the aforesaid boundaries between Nova Scotia, on the one part, and East Florida, on the other, shall respectively touch the Bay of Fundy, and the Atlantic Ocean; excepting such islands as now are, or heretofore have been, within the limits of the said Province of Nova Scotia."

Doubts having arisen what river was truly intended under the name of the River St. Croix, mentioned in the aforesaid treaty of peace, and forming a part of the boundary therein described, that question was referred, by virtue of the fifth article of the treaty of 1794, to the final decision of Commissioners to be appointed in the manner therein prescribed: And both parties agreed, by the said article, to consider such decision as final and conclusive, so as that the same should never thereafter be called into question, or made the subject of dispute or difference between them.

The Commissioners appointed in conformity with the said fifth article of the treaty of 1794, did, by their declaration of October 25th, 1798, decide, a river called "Scoodiac," and the northern branch of it (called "Cheputnaticook,") to be the true River St. Croix intended by the treaty of peace, that its mouth was in the Bay of Passamaquoddy at a place called Joe's Point, and its source at the northernmost head spring of the northern branch aforesaid.

By the treaty of peace concluded at Ghent, on the 24th of December, 1814, it was agreed to provide for a final adjustment of the boundaries described in the treaty of 1763, which had not yet been ascertained and determined, embracing certain islands in the Bay of Fundy, and the whole of the boundary line from the source of the River St. Croix to the most north-western point of the Lake of the Woods.

It is provided by the fifth article of the said treaty as follows:

"WHEREAS neither that point of the Highlands lying due north from the source of the River St. Croix, and designated in the former treaty of peace between the two Powers, as the north-west angle of Nova Scotia, nor the north-western most head of Connecticut River, has yet been ascertained; and whereas that part of the boundary line between the dominions of the two Powers, which extends from the source of the River St. Croix, directly north, to the above-mentioned north-west angle of Nova Scotia; thence, along the said Highlands which divide those rivers that empty themselves into the River St. Lawrence from those which fall into the Atlantic Ocean, to the north-western most head of Connecticut River; thence, down along the middle of that river, to the forty-fifth degree of north latitude; thence, by a line due west, on said latitude, until it strikes the River Iroquois or Cataraquy, has not yet been surveyed; it is agreed that for those several purposes, two Commissioners shall be appointed, sworn, and authorized to act, &c. . . .



. . . . . The said Commissioners shall have power to ascertain and determine the points above-mentioned, *in conformity with the provisions of the said treaty of peace of 1763*, and shall cause the boundary aforesaid, from the source of the River St. Croix to the River Iroquois or Cataraquy, to be surveyed and marked according to the said provisions. The said Commissioners shall make a map of the said boundary and annex to it a declaration under their hands and seals, certifying it to be the true map of the said boundary, and particularizing the latitude and longitude of the north-west angle of Nova Scotia, of the north-western most head of Connecticut River, and of such other points of the said boundary as they may deem proper. And both parties agree to consider such map and declaration as finally and conclusively fixing the said boundary."

The same article further provides for the reference to a friendly Sovereign or State, in the event of the Commissioners differing, or of both, or either of them, refusing, declining, or omitting to act.

The Commissioners appointed in conformity with the said fifth article, after sitting near five years, could not agree on any of the matters referred to them, nor even on a general map of the country exhibiting the Boundaries respectively claimed by each party. They accordingly made separate reports to both Governments, stating the points on which they differed, and the grounds upon which their respective opinions had been formed.

The case having arisen which rendered it necessary to refer the points of difference to a friendly Sovereign or State, the two Powers found it expedient to regulate the proceedings, and make some further provision in relation to the said reference; and, on the 29th of September, 1827, concluded a Convention to that effect, which amongst other provisions, stipulates, viz:

## ARTICLE II.

The reports and documents, thereunto annexed, of the Commissioners appointed to carry into execution the fifth article of the Treaty of Ghent, being so voluminous and complicated, as to render it improbable that any Sovereign or State should be willing or able to undertake the office of investigating and arbitrating upon them, it is hereby agreed to substitute for those reports, new and separate statements of the respective cases, severally drawn up by each of the contracting Parties, in such form and terms as each may think fit.

The said statements, when prepared, shall be mutually communicated to each other by the contracting parties, that is to say: by the United States to His Britannic Majesty's Minister or Chargé d'Affaires at Washington, and by Great Britain to the Minister or Chargé d'Affaires of the United States at London, within fifteen months after the exchange of the ratifications of the present Convention.

After such communication shall have taken place, each Party shall have the power of drawing up a second and definitive statement, if it think fit so to do, in reply to the statement of the other Party, so communicated; which definitive statements shall also be mutually communicated, in the same manner as aforesaid, to each other, by the contract-

ing Parties, within twenty-one months after the exchange of the ratifications of the present Convention.

### ARTICLE III.

Each of the contracting parties shall, within nine months after the exchange of ratifications of this Convention, communicate to the other, in the same manner as aforesaid, all the evidence intended to be brought in support of its claim, beyond that which is contained in the reports of the Commissioners, or papers thereunto annexed, and other written documents laid before the Commission, under the fifth article of the Treaty of Ghent.

Each of the contracting Parties shall be bound, on the application of the other Party, made within six months after the exchange of the ratifications of this Convention, to give authentic copies of such individually specified acts of a public nature, relating to the territory in question, intended to be laid as evidence before the Arbiter, as have been issued under the authority, or are in the exclusive possession of each Party.

No maps, surveys, or topographical evidence of any description, shall be adduced by either Party, beyond that which is hereinafter stipulated, nor shall any fresh evidence of any description, be adduced or adverted to, by either Party, other than that mutually communicated or applied for, as aforesaid.

Each Party shall have full power to incorporate in, or annex to, either its first or second statement, any portion of the reports of the Commissioners or papers thereunto annexed, and other written documents laid before the Commission under the fifth article of the Treaty of Ghent, or of the other evidence mutually communicated or applied for as above provided, which it may think fit.

### ARTICLE IV.

The map called Mitchell's map, by which the framers of the Treaty of 1783 are acknowledged to have regulated their joint and official proceedings, and the map A, which has been agreed on by the contracting Parties, as a delineation of the water courses, and of the boundary lines in reference to the said water courses, as contended for by each Party respectively, and which has accordingly been signed by the above named Plenipotentiaries, at the same time with this Convention, shall be annexed to the statements of the contracting Parties, and be the only maps that shall be considered as evidence, mutually acknowledged by the contracting Parties, of the topography of the country.

It shall, however, be lawful for either Party, to annex to its respective first statement, for the purposes of general illustration, any of the maps, surveys, or topographical delineations, which were filed with the Commissioners under the fifth article of the Treaty of Ghent, any engraved map heretofore published, and also a transcript of the above mentioned map A, or of a section thereof, in which transcript each party may lay down the highlands, or other features of the country, as it shall think fit; the water courses and the boundary lines, as claimed by each party, remaining as laid down in the said map A.

But this transcript as well as all the other maps, surveys, or topographical delineations, other than the map A, and Mitchell's map, in-

tended to be thus annexed, by either Party, to the respective statements, shall be communicated to the other Party, in the same manner as aforesaid, within nine months after the exchange of the ratifications of this Convention, and shall be subject to such objections and observations, as the other contracting Party may deem it expedient to make thereto, and shall annex to his first statement, either in the margin of such transcript map or maps, or otherwise.

[Where map A and Mitchell's map differ one from the other, they must of course, be considered as evidence mutually acknowledged; the map A, of the actual topography of the country, and Mitchell's map, of the topography as it was understood by the framers of the treaty of 1783.

The said map A, was prepared at London, in the year 1827, under the superintendence of the British and American plenipotentiaries, by the late Mr. Tiarks, the astronomer employed on the part of Great Britain in the proceedings of the joint Commission under the Treaty of Ghent.

The King of the Netherlands having been selected by the two Governments as Arbiter, each laid before him, in conformity with the provisions of that Convention, all the evidence intended to be brought in support of its claim and two separate statements of the respective cases. Those four statements, which embrace the arguments at large of each party respectively, have been printed but not published.

Whichever Highlands might be decided by the commissioners, or by the Arbiter, to be the highlands contemplated by the treaty of 1783; the north west angle of Nova Scotia is expressly prescribed by that treaty to be on the Highlands, and the boundary to extend from that angle, along the said Highlands which divide, &c., to the north-western-most head of Connecticut River.

According to the award of the King of the Netherlands, the termination of the line drawn due north from the source of the River St. Croix, that is to say, the northwest angle of Nova Scotia, is placed in the bed (le milieu du thalweg) of the River St John: and the boundary, from that point to the southwesternmost source of the River St. Francis (distant about 75 miles in a straight line) is along the bed of the Rivers St. John and St. Francis. Neither the angle, nor the boundary are on, and along Highlands according to the provisions of the treaty of 1783; and the award was not therefore binding on either Great Britain or the United States. His Majesty the King of the Netherlands seems indeed to have viewed it in the same light, and only as a declaration of what he considered, under all the circumstances of the case, as an equitable division of the disputed territory. For he does not *decide* what is the north west angle; nor that the proposed line is, or must be considered as the boundary, (terms used by him in reference to the northwesternmost head of the Connecticut River,) but that it will be *suivable*, or, convenient, (il conviendra) to adopt, for the limit of the two states, the line as above stated.

However disposed the Government of the United States might have been to acquiesce in any decision, avowedly declared by the Arbiter to be in conformity with the treaty of 1783, that is to say, determining and not varying the boundaries designated by that treaty; it had not the power voluntarily to vary those boundaries without the consent of the State affected by such alteration. Against that alteration, the State of

Maine entered a solemn protest by their resolutions of 19th January, 1832. And the Senate of the United States did accordingly refuse to give its assent to the award.]

The Statements of the case, respectively laid by the two Powers before the King of the Netherlands, are those which, in the following essay, are called the "American" and the "British" Statements.

Subsequent to the treaty of 1783, the Province of Nova Scotia, which at the date of that treaty, was contiguous to the United States, has been divided, by the British Government, into two Provinces; the south-eastern part, or peninsula, retaining the name of Nova Scotia, and the north-western part, which is that adjacent to the United States, having been erected into a new Province, by the name of New Brunswick.

The British Province of Quebec, as it was called at the date of the treaty of 1783, has also been since divided into two Provinces, viz: Upper Canada and Lower Canada; this last being that which is contiguous to the United States, as far west as the Boundary now in discussion extends.

On the other hand, that portion of the State of Massachusetts, lying east of the State of New Hampshire, which was, at the date of the treaty of 1783, known by the name of Province of Maine, and extended eastwardly as far as the then Province of Nova Scotia, has been since erected into a State by the name of Maine, admitted as such into the Union, and is now contiguous to the British Provinces of New Brunswick and Lower Canada.

### § 1.

#### American Line.

THE River Scoodiac having been determined to be the true River St. Croix, a monument has been erected at its source, which is mutually acknowledged as the point of departure, whence the boundary is a due north line to the highlands designated by the treaty of 1783. What are the highlands thus designated, is the question at issue.

As the description of the boundary line of the United States, in the treaty of 1783 commences, so also it terminates, at the north-west angle of Nova Scotia. In order, therefore, to include the whole line from the River St. Croix to the sources of the Connecticut River, it is necessary to bring together and connect the former and the latter clause descriptive of the Boundary, in the second article of the treaty. They are as follows, viz:

"From the north-west angle of Nova Scotia, viz: that angle which is formed by a line drawn due north from the source of St. Croix River

to the Highlands ; along the said Highlands which divide those rivers that empty themselves into the River St. Lawrence, from those which fall into the Atlantic Ocean, to the north-westernmost head of Connecticut River, . . . . . East by a line to be drawn along the middle of the River St. Croix, from its mouth in the Bay of Fundy to its source, and from its source directly north to the aforesaid highlands which divide the rivers that fall into the Atlantic Ocean from those which fall into the River St. Lawrence."

In the first clause, the due north line terminates at the Highlands generally ; but in the latter clause, the same north line is declared to extend to the aforesaid highlands, which divide the rivers that fall into the Atlantic Ocean from those which fall into the River St. Lawrence. And moreover, in the first clause, the highlands at which the due north line terminates are, by the word *said*, which almost immediately follows, identified with the highlands which divide the rivers as aforesaid.

The north-west angle of Nova Scotia is therefore defined by the treaty, as being formed by the intersection of a line drawn due north from the source of the River St. Croix with the highlands aforesaid : and the summit of that angle is at the point of intersection, and must necessarily be on the very highlands, which divide the rivers that empty themselves into the River St. Lawrence, from those which fall into the Atlantic Ocean.

The angle formed by the due north line with the Highlands described by the treaty, which extend from the termination of that due north line to the north-westernmost head of Connecticut River, is the north-east angle of the United States.

The north-west angle of Nova Scotia is necessarily formed by the western boundary of that Province, which divides it from the United States, and by its northern boundary which, extending eastwardly from the termination of the due north line, divides it from Canada.

Those two angles have a common side, viz : the due north line ; and the termination of that line is the common summit of both.

The object of the treaty was to declare with precision the boundaries between the United States and Great Britain. But the boundary between Nova Scotia and the other dominions of Great Britain in that quarter, depended on the acts of Great Britain alone, and was a subject foreign to the purposes of the treaty.

The description of the boundary of the United States would have been, without any reference to the north-west angle of Nova Scotia, as complete and intelligible by defining it as follows, viz : " East by a line to be drawn along the middle of the River St Croix, from its mouth in the Bay of Fundy, to its source ; and from its source, directly north, to the aforesaid Highlands, which divide the rivers that fall into the Atlan-

tic Ocean from those which fall into the River St. Lawrence ; and thence, along the said Highlands which divide, &c., to the north-western most head of Connecticut River."

The only object which could be had in view, in mentioning the north-west angle of Nova Scotia in the treaty, was to refer to a point, the position of which had been previously designated by the public acts of Great Britain. Whether the place of beginning was, or was not, the north-west angle of Nova Scotia, was, unless for the sake of reference to a point previously designated, wholly foreign to the object of the treaty.

The only previous public British acts, in which the limits of Nova Scotia were laid down, are the grant of that Province to Sir William Alexander in 1621, and the commissions of its governors, from the year 1763 to the year 1782. The difference between the limits of the grant, and those described in the commissions, will be adverted to hereafter. And in those commissions, Nova Scotia is declared to be bounded to the westward, by a line drawn from Cape Sable, across the entrance of the Bay of Fundy, to the mouth of the River St. Croix ; by the said river to its source ; and by a line drawn due north from thence to the southern boundary of our colony of Quebec. (a)

The southern boundary of the Province, Colony or Government of Quebec is declared, by the Royal proclamation of 1763, and by the Quebec act of 1774, to be, along the Highlands which divide the rivers that empty themselves into the River St. Lawrence, from those which fall into the sea.

The north-west angle of Nova Scotia thus previously described, is necessarily that to which the treaty refers : and the dividing Highlands designated by the treaty are thereby identified, with those declared by the acts aforesaid, to be the southern boundary of the Province of Quebec.

The precise spot, where the north-west angle of Nova Scotia would be found, was not known at the date of the treaty. It could not be ascertained, until it had been determined which river was the St. Croix, and which was the source of that river contemplated by the treaty ; nor until the due north line from that source had been surveyed, as far as the sources of a river emptying itself into the River St. Lawrence. When, therefore, the north-west angle of Nova Scotia is said, in the treaty, to be formed, &c. this expression must be understood, as prescribing the rules by which, (and therefore the spot where,) it would be found.

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(a) In the commission of Montague Wilmot, dated 21st of November, 1763, the following proviso is added after the words, *to the westward*, viz : " although our said Province has anciently extended and does of right extend as far as the River Pentagoet or Penobscot." The proviso is omitted in all the subsequent commissions.

All those objects have now been accomplished; and from that monument at the source of the St. Croix, which has been determined to be the point of departure, the due north line has been surveyed one hundred and forty-four miles, to the source of a stream which falls into the River St. Lawrence.

According to the express words of the treaty, the boundary line through its whole extent, from the north-west angle of Nova Scotia, to the north-westernmost head of Connecticut River, must be along the highlands which divide those rivers that empty themselves into the River St. Lawrence, from those which fall into the Atlantic Ocean.

The words "highlands which divide the rivers," are inseparable; the term "Highlands" in its general sense, and undefined by any adjunct, being one of relative import and indeterminate signification.

Had the term "Highlands," been used alone in the treaty, there would have been no certain criterion by which to ascertain what were the highlands intended. And it would have been impracticable, amongst the different lines which might be suggested through a country, intersected by numerous broken ridges, to decide which was entitled to preference.

It is the property of dividing the rivers, therefore, which affixes a specific and precise meaning to the general expression of "Highlands;" and which determines both the northwest angle of Nova Scotia and the Boundary line extending thence to the north-westernmost head of Connecticut River. It is that property, (what, in French, is called, "Point de Partage,") which constitutes the essence of the treaty definition.

Avoiding accordingly the words, "mountains," "hills," or any such as might have been derived from, or indicative of, the peculiar nature of the ground, the general expression "Highlands" was adopted, as applicable to any ground, (whatever might be its nature or elevation,) along which the line dividing the rivers should be found to pass: the fact, that the ground dividing rivers is necessarily more elevated than those rivers and the country adjacent to their banks, being sufficient to entitle it to the designation of "Highland," in relation to those rivers and to that country.

No Highlands can divide the rivers that fall into the Atlantic Ocean from those which fall into the River St. Lawrence, but those Highlands in which the rivers thus designated, or their tributary streams, have their respective sources, and thence flow in different directions, to the Ocean and to the St. Lawrence, respectively. The map A. shows that there are, along the line drawn due north from the source of the River St. Croix, but two places, which divide rivers thus flowing in different directions, and in which those rivers have their respective sources.

The due north line from the source of the River St. Croix, crosses



no other rivers, for a distance exceeding ninety miles, but tributary streams of the River St. John, and that river itself. There is not along the line, through the whole of that distance, a single point that divides rivers falling into the Atlantic Ocean from those falling into the River St. Lawrence, or that divides any other water courses whatever, but such as fall into one and the same river, viz: the River St. John.

At about ninety seven miles from the source of the River St. Croix, the due north line reaches a ridge or Highland which divides tributary streams of the River St. John, which falls into the Bay of Fundy, from the waters of the River Ristigouche, which falls through the Bay des Chaleurs, into the Gulf of St. Lawrence. And, in its further north course, the said line, after crossing several upper branches of the River Ristigouche, reaches, at the distance of about 140 miles from the source of the River St. Croix, the Highlands which divide the waters of the said River Ristigouche from the tributary streams of the River Metis, which falls into the River St. Lawrence. It is clear that there is no other possible choice but between those two places, and that the north-west angle of Nova Scotia must, of necessity, be found at the intersection of the said due north line with, either the Highlands which divides the waters of the River St. John from those of the River Ristigouche, or the Highlands which divide the waters of the River Ristigouche from those of the River Metis; since there is no other point, through the whole course of the due north line, which divides any other waters but such as empty themselves into the same river.

The selection between those two dividing Highlands evidently depends on what is meant, according to the treaty of 1783, by rivers that empty themselves or fall into the River St. Lawrence, and by rivers which fall into the Atlantic Ocean.

The treaty recognizes but two classes of rivers. The first class embraces only the rivers falling into a river, designated by its specific name, and cannot be construed to include any rivers that do not empty themselves into the river thus specially designated. All the rivers, met by the due north line, which do not actually empty themselves into the River St. Lawrence, according to its known limits, are, by the treaty, considered as falling into the Atlantic Ocean.

The limits of the River St. Lawrence are defined by the royal proclamation of 1763, in which the western boundary of the Government of Quebec is described, as crossing the *mouth* of the River St. Lawrence, from Cape Rosiers to the Labrador Coast. The Bay des Chaleurs being south of Cape Rosiers, the River Ristigouche does not fall into the River St. Lawrence.

The north-west angle of Nova Scotia is therefore, as the United States



insist, and have uniformly insisted, that spot on the due north line, (about 140 miles from the source of the River St. Croix,) where that line is intersected by the highlands, which there divide the sources of a branch of the River Metis which empties itself into the River St. Lawrence, from the sources of a branch of the River Ristigouche, which falls through the Bay des Chaleurs and the Gulf of St. Lawrence, into the Atlantic Ocean. And the boundary line extends, as the United States insist, and have uniformly insisted, through its whole extent, from the angle above described, to the north-westernmost head of Connecticut River, along the highlands which divide the sources of the several rivers (from the Metis to the St. Francis) that empty themselves into the River St. Lawrence, from the sources of the tributaries of the Rivers Ristigouche, St. John, Penobscot, Kennebec and Connecticut, all which, either mediately or immediately, fall into the Atlantic Ocean.

That line is delineated on the map A ; and it is believed that a single glance at that map, comparing it with the words of the treaty, will instantaneously lead to the same conclusion.

It is denied on the part of Great Britain, that the boundary thus claimed by the United States, is that which is prescribed or intended by the treaty principally, if not exclusively, on two grounds.

1st. That the Bay of Fundy, as mentioned in the treaty of 1783, is, (as well as the Gulf of St. Lawrence,) intended to be separate and distinct from the Atlantic Ocean ; and that the River St. John, which falls into the Bay of Fundy, (as well as the River Ristigouche which, through the Bay des Chaleurs, falls into the Gulf of St. Lawrence,) is intended, on that as well as on separate grounds, to be excepted from that class of rivers which are described in the treaty as falling into the Atlantic Ocean:

2dly. That the ground, over which the boundary line claimed by the United States does pass, has neither the mountainous character, nor the continuous elevation necessary to entitle it to the designation of "highlands," as intended by the treaty ; and therefore, that the Highlands, claimed on the part of the United States, conform neither in position nor character, to the conditions imposed on them by the treaty.

From those premises, and with reference particularly to the assertion, that the River St. John must be excepted from that class of rivers described in the treaty as falling into the Atlantic Ocean, it is inferred, on the part of Great Britain, that, consequently the Highlands described in the treaty must lie to the southward of that River. And it is further affirmed, that the Highlands, claimed, on the part of Great Britain, as those designated in the treaty of 1783, conform, in every particular, to the conditions imposed on them by that treaty.

Supposing, that the objections raised against the boundary line

claimed by the United States could be sustained, it would not at all follow, as a matter of course, that the Highlands described in the treaty must lie to the southward of the River St. John, or that the boundary line, or Highlands, claimed on the part of Great Britain, conform with the conditions imposed on them by the treaty. And before those objections against the American line are discussed, it will be necessary to examine, along which Highlands the British line is placed, and on what arguments the claim to that line is founded.

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## § 2.

*British Line.*

The north-west angle of Nova Scotia, is, by the treaty, declared to be "formed by a line drawn due north from the source of St. Croix River, to the Highlands."

Immediately following the last mentioned words, viz: "to the Highlands," the words (in reference to the boundaries,) are "along the said Highlands, which divide those rivers that empty themselves into the St. Lawrence, from those which fall into the Atlantic Ocean."

The words, "the said Highlands," identify, therefore, the Highlands at which the due north line terminates, with the Highlands which divide the rivers specified by the treaty.

The east boundary of the United States, is by the treaty declared to be "a line to be drawn along the middle of the River St. Croix, from its mouth in the Bay of Fundy, to its source; and from its source, directly north to the aforesaid Highlands which divide the rivers that fall into the Atlantic Ocean, from those which fall into the River St. Lawrence."

Thus the line drawn due north, or directly north, from the source of St. Croix River, is, in two different clauses of the treaty, declared to extend to, and to terminate at, the Highlands which divide the rivers designated by the treaty. That line is that which forms the north-west angle of Nova Scotia. The northern termination of that line, and the summit of that north-west angle are identic. It appears impossible to have devised expressions that could, with greater precision, have determined the position of the north-west angle of Nova Scotia, as being that point on the Highlands which divide the rivers specified by the treaty, where the said Highlands are intersected by the line drawn due north from the source of the River St. Croix.

By the fourth article of the convention of 1827, the map A, signed by

the plenipotentiaries was agreed on as a delineation of the water courses, and of the boundary lines in reference to the said water courses, as contended for by each party respectively.

The point B, on the said map A, is declared on the map itself, to be the north-west angle of Nova Scotia, as contended for by Great Britain ; and the red colour is likewise declared to be, that which denotes the boundary line as claimed by her. That such are respectively, according to the treaty of 1763, the north-west angle of Nova Scotia and the boundary line between the two countries, has uniformly been affirmed on the part of Great Britain, from the year 1818, when her claim to that extent was first disclosed, to the present year.

That spot and that line are the same, which the British Commissioner under the treaty of Ghent did, in April, 1822, declare to conform with the said treaty ; the line being, as he says, that which is described by the red line on a certain general map made by His Majesty's principal surveyor.

That point B, the north-west angle of Nova Scotia, as contended for on the part of Great Britain, is situate at or near Mars Hill, on the due north line, about forty miles north from the source of the River St. Croix, and, as the British agents say, on the first Highland which that line encounters.

Mars Hill, so far from being a Highland, which divides the rivers that fall into the Atlantic Ocean, from those which fall into the River St. Lawrence, is, at least, one hundred miles distant in every direction, from any of the sources of any of the rivers that empty themselves into the River St. Lawrence ; and it divides no other rivers, but Goosequick River, from the River Presque Isle ; both which are tributary streams of the River St. John, into which they empty themselves, a few miles east of the said due north line.

It is therefore contended on the part of Great Britain, that the north-west angle of Nova Scotia, described by the treaty as being formed by the due north line, and the Highlands which divide the rivers that fall into the River St. Lawrence, from those which fall into the Atlantic Ocean, may be placed, not on those Highlands, but on a Highland, or place, which does not divide, from each other, the rivers described by the treaty, but only rivers that fall into one and the same river, viz., the River St. John ; a river which, as the United States assert, falls into the Atlantic Ocean, but is considered by Great Britain, as falling neither into the Atlantic Ocean, nor into the River St. Lawrence.

The boundary between the two countries is declared, by the treaty of 1763, to be, *from the north-west angle of Nova Scotia as above described, along the Highlands which divide those rivers that empty them-*

selves into the River St. Lawrence from those which fall into the Atlantic Ocean, to the north-westernmost head of Connecticut River.

From that source, as claimed by Great Britain, and designated on map A by the letter C, to a spot called Metjarmette Portage, which divides the source of the north-westernmost branch of Penobscot River, from the source of a tributary stream of the River Chandiere, which falls into the River St. Lawrence, the boundary claimed on the part of Great Britain, denoted by the red line on map A, extends along the Highlands which divide the sources of several rivers that fall into the River St. Lawrence, from the sources of several tributary streams of the Rivers Connecticut, Kennebec, and Penobscot which fall into the Atlantic Ocean. It is only for that portion of the boundary, or about eighty miles in a straight line, that the British, which there coincides with the American line, fulfils the conditions of the treaty.

From Mars Hill, the assumed north-west angle of Nova Scotia, the British line, till it reaches the nearest or north-easternmost source of the Penobscot, divides, from each other, no other rivers than some tributary streams of one and the same river, viz: the St. John. And thence to the source of the River Chandiere at the said Metjarmette Portage, it divides no other rivers, than the sources of the tributary streams of the Penobscot, from those of the St. John.

From Mars Hill to the sources of the Chandiere, the British line, through the whole distance, or about one hundred and fifteen miles in a straight line, instead of dividing, in conformity with the express and clear words of the treaty, rivers falling into the River St. Lawrence from rivers falling into the Atlantic, divides no other rivers, than rivers falling into the Atlantic Ocean, from rivers falling also into the Atlantic Ocean. Or, according to the suggestions of the British agents, the British line for the whole of that distance, divides no other rivers, than rivers falling into the Bay of Fundy, (St. John) from rivers falling into the Bay of Fundy and the Atlantic Ocean. (St. John and Penobscot.)

It is contended by Great Britain, that, notwithstanding the boundary is expressly declared, by the treaty, to extend from the northwest angle of Nova Scotia to the north-westernmost head of Connecticut River, along the Highlands which divide those rivers that empty themselves into the River St. Lawrence, from those which fall into the Atlantic Ocean; and although these words, *from*, *along*, and *to*, are the clearest and strongest which could have been selected, for the purpose of declaring, that the Boundary thus described must, through its whole extent, from its beginning to its termination, be along the said Highlands; yet that clear and imperative description may be construed to mean; that the line may, for more than one half of its extent, be along ground, which is acknowledged not to divide the rivers thus described by the treaty,

but to divide only rivers acknowledged not to be those contemplated and described by the treaty.

It has been stated that, (independent of the indispensable condition, that they shall divide certain rivers, imposed on the highlands by the express terms of the treaty,) it is contended on the part of Great Britain, that the term, "Highlands," also implies a continuous visible elevation. The first condition determines the *position* of the highlands: the second may be called their *character*.

Supposing for the moment, that this last condition is essential; and admitting that the British line, from the due north line to the source of the Chaudiere, is on highlands of the *character* claimed for them: it is nevertheless undeniable, that the highlands thus asserted to conform with the conditions of the treaty, do not in *position* conform with its express terms.

The assertion, that the point of departure may be placed on a spot, more than one hundred miles distant from that expressly prescribed by the treaty, and that more than one half of the boundary may be, on highlands dividing rivers acknowledged not to be those described by the treaty, had its origin in the unfortunate choice of the officers, selected on the part of Great Britain, as Agent and Commissioner, in conformity with the treaty of Ghent. But, that the British Government should have adopted and continue to sustain a pretended interpretation, so obviously contradictory of the express terms of the treaty, is wholly incomprehensible.

The inferences drawn from some general expressions in the preamble of the treaty, and from presumed intentions ascribed to the negotiators, will be hereafter adverted to. The terms of the treaty, which prescribe the position of the north-west angle of Nova Scotia and of the highlands, are now the subject of discussion: and, when the terms are clear and explicit, an appeal to supposed intentions is inadmissible.

"The first general maxim of interpretation is, that it is not permitted to interpret what has no need of interpretation. When an act is conceived in clear and precise terms, when the sense is manifest, and leads to nothing absurd, there can be no reason to refuse the sense which this treaty naturally presents. To go elsewhere in search of conjectures, in order to restrain or extinguish it, is to endeavor to elude it. If this dangerous method be once admitted, there is no act which it will not render useless. Let the brightest light shine on all the parts of the piece, let it be expressed in terms the most clear and determinate, all this shall be of no use, if it be allowed to search for foreign reasons in order to maintain what cannot be found in the sense it naturally presents." (Vattel, Book 2. ch. 17, § 263.)

The attempts made to reconcile the British claim with the terms of the treaty will now be examined.

The British Commissioner, under the Ghent commission, says, that the treaty directs "that the due North line shall extend to the highlands, evidently meaning the *first* highlands corresponding with the subsequent description, at which that line should arrive; for if the framers of the treaty had other highlands in contemplation, further north, they would have excluded the first highlands, by an express exception of them." And, in the first British statement, Mars Hill is said to be with propriety claimed by Great Britain, as the point of departure on the highlands, amongst other reasons, on the ground of that point being the *nearest* real elevation met by the due north line.

The framers of the treaty, by describing the highlands as dividing the rivers therein designated, did exclude all other highlands, as well the first highlands which the due north line might meet, as any other. And the suggestion is simply to substitute the words "the *first* highlands, &c." for the highlands which divide rivers.

The United States insist that according to the treaty, the boundary line, through its whole extent, *from* the north-west angle of Nova Scotia, to the north-westernmost head of Connecticut, must be *along* the highlands which divide the rivers designated by the treaty.

The manner in which the British agent, under the Ghent Commission, attempted to evade that provision, consisted in suggesting various readings of the text.

1. The words used in the treaty, viz: "North to the highlands" are, he says, "evidently to be understood as intending that the North line should terminate whenever it reached the highlands, which, *in any part of their extent*, divide the waters mentioned in the treaty."

2. What he calls the intention of the treaty, will, he says, "be literally effectuated, by a very small *variation* of the expression actually made use of in this regard, namely, by describing the second line forming this angle in the following words, that is to say; along the said highlands *where they* divide those rivers, &c. the expression actually made use of is, along the said highlands *which* divide those rivers."

3. "The true intention of the treaty . . . . . would clearly be ascertained by the following obviously plain and natural, and *nearly literal*, construction of its phraseology, namely;—It is hereby agreed and declared that the following are and shall be the boundaries of the United States, viz: from the North-west angle of Nova Scotia, viz: that angle which is formed by a line drawn due North from the source of St. Croix River to *the line of* the highlands, along the said highlands which divide," &c.

4. Finally the Agent proposes to reverse the description of the boun-

dary. "Let then the tracing of the boundary in this quarter be made, from the north-westernmost head of Connecticut River, *along the highlands* which divide those rivers, &c. to the north-west Angle of Nova Scotia, viz: that angle which is formed by a line drawn due north from the source of St. Croix River to the highlands."

In this last version, the British Agent has not interpolated new words, but besides reversing the line, he has omitted the word *said*, which identifies the highlands which divide the rivers, &c. with those to which the due North line is declared to extend.

It is not necessary to inquire whether the alterations thus suggested would answer the purpose for which they are intended. They have been adverted to, only to show the various attempts of the British Agent, all of which consist in an actual alteration of the expressions of the treaty.

But the plea principally insisted upon, is, that the highlands, said to extend from the source of the Chandiere to Mars Hill, and which are claimed on the part of Great Britain as part of the boundary, although they do not divide the rivers described and contemplated by the treaty, are a *continuation* of, or *connected with* those highlands, which, from the source of the Chandiere to that of the Connecticut, are acknowledged by both parties, to be highlands which divide the rivers contemplated and prescribed by the treaty.

The British Commissioner, under the Ghent Commission, describes the boundary claimed on the part of Great Britain, as a line, "running from the Connecticut, along the highlands acknowledged by both parties; such line being continued along the highlands in that quarter, in such manner as to leave all the sources of the Kennebec and Penobscot south of such line and within the United States, to Mars Hill."

And he adds; "Now what does the word, *along*, in its ordinary signification import? certainly a continuation of those highlands, in which continuation will be found highlands which divide the rivers, &c.

It is not contended, in the British Statements, that the words, *along*, and, *continuation*, are synonymous. The terms, "continuation," "connection," "highlands which connect themselves," are indiscriminately used. Any direct discussion of the terms of the treaty, such as had been hazarded by the former British Commissioner, is avoided. But it is throughout affirmed, that it is not necessary according to the terms of the treaty, that the boundary should, *through its whole extent*, be along Highlands which actually divide rivers emptying themselves into the River St. Lawrence, from those that fall into the Atlantic Ocean.

In describing a boundary line, there are three requisites; the point at which it begins, that at which it terminates, and the course or direction which it follows between those two points. The most appropriate

words, those in most common use for that purpose, are, *from*, *to*, and *along*, or *by*: *from* the point at which the line begins; *to* the point at which it terminates; *along* the direction, or *by* the course which it follows.

The word *from*, both from its etymology and uniform use when applied to place, is that which most precisely designates *beginning*, and excludes any possible interval, between the point to which it refers, and that where the course or direction assigned to the line, does begin. The word *along*, as applied to such course or direction, means *the whole length, following the course of, keeping company with*, means nothing else, and is never used in any other sense.

The treaty having declared the boundary, *from* the North-west Angle of Nova Scotia, *to* the North-westernmost head of Connecticut River, to be *along* the highlands which divide the rivers, &c. that boundary cannot, without a direct violation of the express terms of the treaty, leave the said highlands, at any place, or for any distance, between that angle and that head: it must, through its whole length, between those two points, keep company with and follow the course of those highlands.

What precludes any cavil respecting the obvious meaning of those emphatic words in the treaty, is, that there was, in that respect, a defect in the public acts of Great Britain, from which the description of the line was borrowed; and that that defect was corrected by the framers of the treaty, who placed, in most explicit terms, the beginning and the termination of the boundary line, on the actual dividing highlands.

According to the Proclamation of 1763, the line, crossing the River St. Lawrence and the Lake Champlain in forty-five degrees of north latitude, *passes along* the highlands which divide the rivers that empty themselves into the said River St. Lawrence, from those which fall into the sea, *and also along* the North coast of the Bay des Chaleurs, &c.

This description is vague, inasmuch as it does not prescribe the manner in which the line is to pass, either from the forty-fifth degree of latitude to the highlands, or from the highlands to the North Coast of the Bay des Chaleurs: but, though defective in that respect, the expressions used in the Proclamation do not contradict the description.

The subsequent Act of Parliament of the year 1774, declared the Province of Quebec to be "bounded on the South, by a line *from* the Bay of Chaleurs, *along* the highlands which divide the rivers (last above mentioned,) *to* a point in forty-five degrees of Northern latitude on the Eastern bank of the River Connecticut."

This description was not merely vague, but inaccurate. The same chasm, as in the Proclamation, was left between the extremity of the Bay of Chaleurs and the dividing highlands; and there was besides another, between those highlands and the point in forty-five degrees of Northern



latitude on the Eastern bank of the River Connecticut. The use of the words *from* and *to* was therefore inappropriate.

But the framers of the treaty of 1763, discussing the terms of an international compact, with the avowed view that all disputes which might arise in future on the subject of the boundaries might be prevented, corrected the defects of the former description, and used no expressions but such as were strictly applicable to the boundary agreed on, and described in the treaty.

The manner in which the line necessary to connect the dividing highlands with the Bay des Chaleurs ought to have been described, was foreign to the subject matter of the treaty; since that particular portion of the southern boundary of the Province of Quebec lay far east of the territories of the United States, and made no part of their boundary as agreed on by the treaty.

The point from which, by the Quebec Act, the line along the highlands was to commence, was not on the highlands; and the word *from* was therefore inapplicable. But the framers of the treaty placed, in the most precise and express terms, the point at which the line along the highlands was to commence, that is to say, the north-west angle of Nova Scotia, on the actual dividing highlands; and to that point, therefore, the word *from* was strictly applicable, and the appropriate one to be used on the occasion. It is only, in case they had not thus expressly placed the north-west angle of Nova Scotia, or place of beginning, on the dividing highlands, that it might have been alleged, that the words *from*, *along*, and *to*, did not imply the necessity of the boundary line being, through its whole extent, along the highlands which divide the rivers designated by the treaty.

The care with which, whilst adopting the point in forty-five degrees north latitude on the bank of the Connecticut River, the framers of the treaty corrected, in that part of the boundary, the defective description of the Quebec Act, affords the most conclusive proof of the deliberate attention which they paid to the subject, and that the words *from*, *along*, and *to*, were not inadvertently introduced; since, fully aware of their import, the negotiators altered the description of the boundary, so as to make it exactly correspond with the true and only appropriate meaning of those words.

The correction consisted in placing the termination of the line which extends along the highlands, at that point where the boundary must necessarily leave them, that is to say, at the source of the Connecticut River; and in describing as another line, that which from that source extends "down along the middle of that river to the forty-fifth degree of north latitude."

Another conclusive proof of the meaning of the words *from*, *along*,

and *to*, as used in this article of the treaty, with reference to the beginning, course, and termination of the boundary, is found in the subsequent parts of the same article, in which they are used for the same purpose, and in the same express sense, not less than eight times, viz :

"To the north-westernmost head of Connecticut River, *thence* down along the middle of that river to the forth-fifth degree of north latitude."

"The River Iroquois, or Cataraguy ; *thence* along the middle of said river into Lake Ontario."

"The communication by water between that lake and Lake Erie ; *thence* along the middle of said communication into Lake Erie."

"The water communication between that lake and Lake Huron ; *thence* along the middle of said water communication into the Lake Huron."

"The River Mississippi ; *thence* by a line to be drawn along the middle of the said River Mississippi, until it shall intersect the northernmost part of the thirty-first degree of north latitude."

"The River Appalachicola or Catahouche ; *thence* along the middle thereof to its junction with the Flint River."

"St Mary's River ; and *thence* down along the middle of St. Mary's River to the Atlantic Ocean."

"East, by a line to be drawn along the middle of the River St. Croix, from its mouth in the Bay of Fundy to its source."

In this last instance, the words *from* and *along* are used ; in the others, the words are *thence* and *along*. The mode of reasoning generally adopted by the British Agents, under the former Commission, renders it perhaps necessary to observe, that the word *thence*, as applied to place, means *from that place*, *from that point* ; and that, therefore, the words *from a certain point*, and *thence*, as applied to a point just before mentioned, are synonymous.

It will not be denied that, in every one of the instances which have been quoted, the boundary line was to extend without chasm or interruption, *from* the point of departure, *along* the defined river or water communication, *to* some other specified point or place. Thus, in the last instance, the line does begin at the mouth of the River St. Croix, and *from* that point extends without any interruption, *along* the middle of the said river *to* its source. It is the same in all the other instances. And, in like manner, the boundary line beginning at the north-west angle of Nova Scotia, must, according to the treaty, *from that point* extend without any interruption, *along* the highlands which divide the rivers designated by the treaty, *to* the north-westernmost head of Connecticut River. To deny this would not be less repugnant to common sense, than if it was asserted that the eastern boundary, instead of keeping, through its whole extent, *from* the mouth of the River St. Croix, *to*

its source, *along* the middle of that river, might, in conformity with the treaty, have been a straight line, *from* the mouth of the river to the junction of its north and west branches.

Another attempt to reconcile the British assumed line, with the terms of the treaty, is founded on a glaring perversion of the meaning of the term "to divide."

The British commissioner had declared it, "to be evident, that the British line *does divide*, as directed in and by both those treaties, (that of 1783 and that of Ghent,) the rivers which empty themselves into the River St. Lawrence, from those which fall into the Atlantic Ocean; thus in every particular satisfying the words of the above named treaties," &c.

It is contended in the British Statement: "that the American Statement has given to the Treaty expression, *dividing rivers*, a narrowness of signification which is by no means borne out by the words themselves:" . . . . . "and that, any highlands rising above the heads of one set of the rivers to be so separated must necessarily divide those rivers, (the Atlantic rivers west of the St Croix) from the other set of rivers named in the treaty, (those falling into the River St. Lawrence,) although those highlands may not extend equally along the sources of the last mentioned rivers."

No attempt is made to prove that the word, "to divide," is susceptible of the meaning ascribed to it.

But, alluding to another branch of the discussion, and taking it for granted that the River St. John is not, within the meaning of the treaty, an Atlantic river, the Author of the British Statement says that, had not the negotiators intended to give the sense he ascribes to the words "to divide," they would have used, when speaking of the rivers to be divided, a more comprehensive term than "Atlantic Ocean."

How the use of that, or any other term, in order to designate the portion of the Sea into which the rivers to be divided empty themselves, could possibly affect the meaning of the word "to divide," it is impossible to divine. Yet, this is the only argument adduced in proof of that singular assertion.

The term "*to divide*," according to the British interpretation, is made synonymous with that "*to lie between*."

Whatever does divide, (or separate) must be contiguous to both the things which are to be divided, (or separated) one from the other.

A line can divide no other territories, (or surfaces,) from each other, but such as are contiguous one to the other. If not contiguous, they are divided, not by a line, but by the intervening territory (or surface.)

In this instance, the rivers which empty themselves into the River St. Lawrence are divided from the sources of the upper branches of the Pe-

nobscoot, 1st. by the highlands which divide the first mentioned rivers from the Northern tributary streams of the St. John ; 2dly, by the entire basin of the River St. John ; 3dly, by the highlands which divide the Southern tributary streams of this river from the upper branches of the Penobscoot.

These last mentioned highlands, which are those claimed by Great Britain as the boundary line, divide no other rivers from each other, but those of the Penobscoot and of the St. John. They divide the rivers that fall into the Atlantic Ocean from those which empty into the River St. Lawrence, in the same manner precisely, as the Thames divides Surrey from Suffolk, and as the Rhine divides France from Poland.

The Pyrennees are sufficiently mountainous and elevated, and they divide Spain from France. Can they be said to divide Germany from Spain ?

If the British line can be said to divide the waters of the Penobscoot from those of the St. Lawrence, and if, on that account, Great Britain may claim the intervening territory ; this may equally be claimed by the United States, since their line divides in the same manner the waters of the St. Lawrence from those of the Penobscoot. The pretended interpretation of the term "to divide," leads only to the conclusion, that the negotiators of the treaty, instead of declaring what the boundaries were, left the whole upper basin of the St. John, and, as will hereafter be shown, left it knowingly, a subject of future dispute between the two Powers.

It will be shown in a subsequent section, that the term "Highlands which divide rivers" is exclusively applicable to the ground in which those rivers have their sources.

Another assertion in the British statement is that, because one of the boundary lines (the highlands,) was to separate the sources of the rivers to be divided, it follows that none of those rivers can according to the treaty be intersected by another line of the boundary, (the due north line.) Without adverting at present to the inferences attempted to be drawn from that supposition, it will be sufficient here to observe: that the intention of that clause of the treaty is precisely what it purports to be, viz. that the boundary line should, through its whole extent from the north-west angle of Nova Scotia to the head of Connecticut River, divide from each other the rivers that empty themselves into the River St. Lawrence, from those which fall into the Atlantic Ocean ; that this imperative clause, thus to divide the said rivers, applies exclusively to that particular part of the Boundary thus precisely defined ; that it does not prescribe, either to divide or not to divide rivers, with respect to any other portion of the Boundary between the two Powers ; and that every other portion of the said Boundary is defined distinctly, and must be under-

stood as thus defined, according to the terms in which each such portion is respectively described.

The report of Messrs. Featherstonhaugh and Mudge will be examined in another place. But it is evident that the line of highlands which they have explored, however elevated and mountainous it may be, is, in position, in direct opposition to the terms of the treaty. It appears to commence on the due north line, south of the Roostuc River, a few miles north of Mars Hill, and to terminate at the highlands, acknowledged by both parties, a few miles south of the point where the British line according to the map A. terminates. The point of departure on the north line, like Mars Hill, can divide no other waters than tributaries of the St. John. And thence to its termination as above stated, the boundary line, through its whole extent, divides, in the same manner as the British line on the map A. or can divide no other rivers than those which fall into the River St. John, from those which fall in the same river, or from the tributary streams of the Penobscot.

The same observation will apply to every other point on the due north line, south of that contended for by the United States, and to any other line than that which they claim.

No other point will fulfil the conditions prescribed by the treaty, viz : that the north east angle of the United States, the summit of which is the same as the summit of the north west angle of Nova Scotia, must be on the highlands, which divide those rivers that empty themselves into the River St. Lawrence, from those which fall into the Atlantic Ocean.

Any line, drawn from any point of the due north line, other than the line of highlands in which the rivers emptying themselves into the River St. Lawrence have their sources, must necessarily, through its whole extent, to the highlands acknowledged by both parties, pass over ground which does not divide, from each other, those rivers which by the treaty are prescribed to be divided. Such line, as will appear by looking at any map of the country, instead of dividing or separating rivers, must intersect several branches of the St. John, and the St. John itself, if the line commences at a point north of that river. Or, if it does divide any rivers, they will be only some of the tributaries of the St. John.

If the objections against the American line could be sustained, the British line, as well as any line other than that claimed by the United States, would still be, in position, inconsistent with, and in direct opposition to the express terms of the treaty. Should those objections prevail, the only legitimate inference would be, that the negotiators of the treaty had prescribed a boundary line, the conditions of which were contradictory, and therefore that the treaty could not be executed.

It will be hereafter demonstrated, that, with respect to the north-eastern

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boundary, the negotiators of the treaty, if they did prescribe such contradictory conditions, did it deliberately and knowingly.

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§ 3.

Signification of the expression "Highlands which divide Rivers."

It has already been observed, that the term "Highlands," used alone, was one of relative import and indeterminate signification: that, if thus used alone in the treaty, it would have been inapplicable to a boundary; and there would have been no certain criterion by which to ascertain what were the highlands intended.

The word used alone has been applied to various objects, sometimes to a certain district of country, at others in order to designate some particular spot, always relatively to some other district or object.

The highlands of Scotland are a district of country generally mountainous, thus called, as contradistinguished from the southern part of Scotland, known by the name of Lowlands. The name of Highlands is given, in New York, to that particular portion of the extensive chain, known in Virginia by the name of Blue-ridge, through which the tide water has forced its passage up the river Hudson. In New Jersey, the Highlands of Neversink are apparently insulated hills of very moderate elevation, close to the Sea shore. In every instance, the word, is used as a relative term in reference, either to the Lowlands, to the River Hudson, or to the Sea.

But the word "Highlands," is never used in the treaty, but connected with the words "which divide the rivers, &c." And it is accordingly contended, on the part of the United States; that the property of dividing the rivers designated by the treaty, is that which affixes to that expression a definite and precise meaning; that, united with that adjunct, the word "Highlands" was judiciously selected, in reference to an unexplored country, as applicable to any ground, whatever might be its nature or elevation, along which the line dividing the rivers should be found to pass; and that the fact, that the ground dividing rivers is necessarily more elevated than those rivers and their banks, is sufficient to entitle it to the designation of "Highlands," in relation to those rivers. On the other hand, Great Britain maintains, that the term "Highlands," employed in the Treaty, implies, not merely lands which divide rivers flowing in opposite directions, but high, i. e. elevated lands, or, in other words, a mountainous tract of country; that, it is not however necessary, that those highlands should present an absolutely unbroken and

continuous ridge, without the intervention of valley or swamp ; but that the highlands contemplated by the treaty ought to conform to the above cited definition of the term, by displaying a generally elevated and mountainous character.

Such a character, Great Britain affirms, that the highlands claimed by her do in reality bear ; a fact which may be admitted. She further affirms, that not one-third of the American line can be shown to run along any lands which, according to her definition of the term, are entitled to the appellation of highlands ; an assertion which, the line not having been yet surveyed, is neither admitted or denied. It is evident, from what precedes, that, on the part of the United States, the elevated or mountainous character of either line is considered, as unimportant and irrelevant to the questions at issue between the two Powers.

It is true, that a common error prevails in relation to that subject, viz : that of supposing, that highlands which divide rivers must be mountainous.

Because the Alps divide the rivers of Italy from those of Germany and France ; because those of France are divided from those of Spain by the Pyrennees ; because, in America, the Alleghany mountains, for an extent of several hundred miles, divide the sources of the rivers which fall into the Gulf of Mexico, from those of the rivers which empty themselves into the main Atlantic Ocean ; it seems to have been concluded by many, whose opinion was founded only on an erroneous analogy, that the highlands which divide the rivers which, in the territory in question, flow in opposite directions, must also be a continuous chain of conspicuous mountains, soaring above all the adjacent country. But nature is not so uniform in her works, as the tendency of the human mind to generalize would make her ; facts will upset systems formed before those had been ascertained ; and the ridges which divide the sources of the River St. John, from the tributary streams of the River St. Lawrence, as those which separate the Volga from the Neva, the Niemen and the Duna from the Nieper, though they may not have the character of conspicuous mountains, are not the less embraced by the general expression of "highlands which divide those rivers respectively."

If, even in America, where the term "dividing highlands" is generally used, some otherwise well informed men, such as Mr. Sullivan, were not acquainted with its technical meaning ; it is natural that it should have been misunderstood in England, where, the term "Highlands," as dividing Rivers, has, it is believed, never been used, either in public documents or other works, except in reference to American geography and in conformity with American phraseology. There does not seem indeed to be any English term precisely corresponding with that of

"height of land," or, "highlands," as used in America in reference to the division of waters. It is not known, by what specific appellation, a line running, for instance, along the ground which divides the rivers in England, which fall into the Irish Channel, from those emptying themselves into the North Sea, might be properly designated according to English geographical phraseology. That ground would certainly be called in Canada and the northern part of the United States, by the name of highlands; in the middle and southern states, by that of dividing ridge. An appellation, to which that ground is not, on account of its elevation or mountainous character, better entitled, than that which the United States claim as their north-eastern boundary.

There is however an equivalent in the French language. The word "Versants," literally "Pourers," is the word used to express the ground from which waters flowing in opposite directions are poured; in other words, the ground in which those waters or rivers have their sources. The principle of making those "Versants" a boundary line has, it is believed, been adopted in some of the conventions between France and both Spain and Sardinia.

A single and obvious consideration is conclusive against the assertion, that, under the treaty, a visible elevation and a generally mountainous country are an essential character, imposed on the boundary line by the term "highlands."

The supposition of two contradictory conditions is inadmissible in any definition. The essential condition of dividing rivers is imposed on the highlands contemplated by the treaty, in the most clear and express terms, and is undeniable. No implied condition, attempted to be inferred from a supposed meaning of the indeterminate word "highlands," can be admitted, if it is, or might be contradictory of the first express and undeniable condition. The nature of the ground, over which, either of the two conflicting British and American lines respectively pass, was not known, even so late as the year 1817, when the first surveys were attempted under the Ghent Commission. To this day, the American line has been but very partially examined. In their total ignorance of the nature of that ground, it was impossible for the negotiators of the treaty of 1783 to divine, whether a line, dividing the rivers specified by the treaty, would also be found to extend along a generally mountainous country. And since it was not known, whether they would, or would not be the case, the supposition that such a character, (which might prove contradictory of the first essential and acknowledged condition,) is attached to the word "highlands," is inadmissible.

But it will besides be now demonstrated; that the terms "highlands which divide rivers," and "height of land" are synonymous; that the



term "height of land," and occasionally that of "highlands," is used uniformly to designate the ground which divides rivers, without regard to its elevation ; and that the same term always designates the ground, in which the rivers thus divided actually have their sources.

The first position is undeniable.

Governor Pownall says : "the Connecticut River rises in north latitude 45° 10', at the *height of the land* in longitude, &c. It has its birth in a swampy cove at the *height of the land*."

Again ; "a range running hence crosses the East Boundary line of New Hampshire in latitude 44½, and tending north east from the *height of the land* between Kennebaeg and Chaudiere Rivers : of the nature and course of this *high Land* in these parts I am totally uninformed."

Again ; "all the Heads of Kennebaeg, Penobskaeg, and Passamaquoda River are, on the *Height of the Land* running east north east."

Thus both the *highlands* contemplated by the treaty, and acknowledged as such by both powers, and the *highlands* claimed on the part of Great Britain, as being also contemplated by the treaty, are designated by Pownall, by the appellation of *Height of the Land*.

The Southern boundary of the Province of Quebec, or Lower Canada, is, in every public act of Great Britain which designates it, described as being along the *highlands* which divide, &c. The Committee of the Executive Council of the Province of Quebec, in their report of August, 1787, speaking of that boundary, call it the "*height of land*."

Mr. Bouchitte, late surveyor general of Lower Canada, speaking of a chain that commences upon the Eastern branch of the Connecticut River, takes a north-easterly course, &c., and terminates near Cape Rosier, calls it "the ridge generally denominated the *land's height*, dividing the waters that fall into the St. Lawrence from those taking a direction towards the Atlantic Ocean. In his large map, he gives the name of "*height of land*" not only to the acknowledged highlands, but also to those in the vicinity of Lake Temiscouata ; whilst, in his topographical description, (page 535,) he says that the River du Loup, which has its source in that identical *height of land*, rises in the *highlands*.

Finally, it is expressly affirmed in the British statements, that "the term *height of land* was well known in America, and frequently used in works, with which the Negotiators of the Treaty cannot be supposed to have been unacquainted, to express any land immediately separating head waters falling off on each side in opposite directions." And it is likewise positively acknowledged, that "the distinctive appellation of the "*height of land*," was given to the *highlands* acknowledged by both parties, viz : those "dividing the waters that fall into the Atlantic Ocean, from those which fall into the River St. Lawrence to the West of the sources of the River St. John, and (of) the western head of the Penob-

scot." Several other instances will be given of the two terms being used as synonymous, as we proceed to show the signification of the term "height of land."

Governor Pownall says, (page 10,) "The Hudson's River arises from two main sources derived by two branches which meet about ten miles above Albany, the one called the Mokawk's River, (*rising in a flat level tract of country, at the very top or height of the land to westward,*) comes away east and south-east at the foot, on the north sides of the mountains, which the Indians call by a name signifying the endless mountains."

In this instance, the appellation of the "height of the land" is given, not to the mountains, the basis of which is washed by the river in its further course east and south-east from its source, but to the very spot in which the Mohawk River takes its source, and which divides it from the sources of rivers flowing into Lake Ontario; and that *height of the land* is expressly stated to be "*a flat level tract of country.*"

Again, (page 13,) "Between the northern part of the Hudson's River, and the southern parts of the Lakes (*b*) and drowned land, is the *height of the land* of about twelve or fourteen miles breadth, whence the waters run different ways, part to the South, part to the north; *over this Portage* to Lake George is a wagon road.

Across this very *height of land*, which divides the waters of two mighty rivers, the Hudson and the St. Lawrence, the Canal has now been opened, which unites Hudson's river with Lake Champlain, the outlet of which flows into the River St. Lawrence; and that *height of land*, the summit level of the Canal, the *point de partage*, is only 147 feet above the level of tide water, as will be seen by the report of the Commissioners, and by the map in illustration thereof.

It is believed, that a more conclusive proof than is afforded by the two last quotations, cannot be adduced, that the appellation of "height of land" is given only in reference to the division of waters, and not in the least to the character and elevation of the ground.

The celebrated British traveller, Sir Alexander McKenzie, the first who, from the River St. Lawrence, penetrated through the Continent of North America, both to the Arctic and to the Pacific Oceans, has prefixed to the account of his voyages, a general history of the fur trade from Canada to the North-west. He describes, with great precision and correctness, the route pursued by the traders, from the junction of the Utawas River with the St. Lawrence, near Montreal, to the waters of

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(*b*) Viz: Lake Champlain and Lake George. The situation of the drowned lands, on the South Bay of Lake Champlain, (where the Canal terminates,) may be seen in Pownall's and several other maps.

the great Arctic, or McKenzie's River. And he designates the various dividing grounds traversed on that long voyage, in the following manner :

Speaking of the Portage, from the source of the Petite Riviere, a tributary of the Utawas River, to the waters of the French River, which empties into Lake Huron, he says, "The last (Portage) in this river (Petite Riviere) is the Turtle Portage, eighty-three paces, on entering the lake of that name, where, indeed, the river may be said to take its source. From the first vase to the great River, the country has the appearance of having been overrun by fire, and consists, in general, of huge rocky hills. The distance of this portage, which is *the height of land* between the waters of the St. Lawrence and the Utawas, is 1513 paces to a small Canal in a plain, that is just sufficient to carry the loaded canoe about one mile to the next vase, which is 725 paces."

Alexander Henry, an earlier traveller, who passed over the same dividing ground in the year 1761, gives it the same appellation. "We had now passed the country, of which the streams fall North-eastward into the Outawais, and entered that from which they flow, in a contrary direction towards Lake Huron. On one side of the *height of land*, which is the reciprocal boundary of these regions, we had left Lake aux Tourtes and the River Matawa, and before us, on the other, was Lake Nipissingue.

McKenzie, speaking of Lake Superior, says, "This Lake may be denominated the grand reservoir of the River St. Lawrence, as no considerable rivers discharge themselves into it. . . . .

. . . Indeed, the extent of country from which any of them flow, or take their course in any direction, cannot admit of it, in consequence of the *ridge of land that separates them* from the rivers that empty themselves into Hudson's Bay, the Gulf of Mexico, and the waters that fall in Lake Michigan."

Henry, navigating along the northern shore of Lake Superior in the year 1775, says, "In the evening we encamped at the mouth of the Pitijic, a river as large as that of Michipicoten, and which in like manner takes its rise in the *high lands* lying between Lake Superior and Hudson's Bay. From Michipicoten to the Pitijic, the coast of the lake is mountainous : the mountains are covered with pine, and the valleys with spruce fir."

It will be observed, that ~~the~~ dividing ground which separates the rivers that fall into Lake Superior, from those that empty themselves into Hudson's Bay, which McKenzie calls *the ridge of land*, is by Henry designated by the name of *high lands* ; and that this last writer, reserving that term for the dividing ground, gives the name of *mountains* to the coast of the lake.

McKenzie, after having described the route from the shores of Lake

Superior, about forty miles to the north-west, says, "From hence the course is on the lake of the same name, (*Perche*) west-south-west three miles to the *height of land* where the waters of the Dove or Pigeon River terminate, and which is one of the sources of the great St. Lawrence in this direction. Having carried the canoe and lading over it 679 paces, they embark on the lake of *Hauteur de Terre*, which is in the shape of a horse-shoe. It is entered near the curve, and left at the extremity of the western limb, through a very narrow channel, where the canoe passes half loaded for 30 paces with the current, which conducts these waters till they discharge themselves through the succeeding lakes and rivers, and disembogues itself, by the River Nelson, into Hudson's Bay."

Henry, speaking of the same dividing ground which he describes as a chain of lakes, says, "The region of the lakes is called the *Hauteur de Terre*, or *land's height*."

Describing the rivers that empty themselves into Lake Winipic, McKenzie says, "those on the north side are inconsiderable, owing to the comparative vicinity of the *high land* that separates the waters coming this way from those discharging into Hudson's Bay."

Here McKenzie designates the dividing ground by the name of *high land*. Sometimes he calls it a ridge; when he speaks afterwards of the two places which divide the waters of the River Missinipi from those of Lake Winipic, and of McKenzie's River respectively, he uses, as synonymous, the word *portage*, (in English, *carriage*;) which last designation is more particularly applied to the route or path across the height of land, along which the canoes are carried from water to water. But he never uses the term *height of land* itself, except for the purpose of designating the ground which does divide the rivers.

Mr. Bouchette, besides other instances, mentions "another and higher range of mountains that forms the *land's height*, and divides the waters that empty themselves into the St. Lawrence, from those that descend into Hudson's Bay."

And, in another place, (page 36,) he says, "Between it (Lake Michigan) and Lake Huron, there is a peninsula that, at the widest part, is 150 miles, along which, and round the bottom of Michigan, runs part of the chain forming the *land's height* to the southward; from whence descend many large and numerous inferior streams that discharge into it. On the north side of Lake Huron, many rivers of considerable size run from the *land's height* down to it. One of them, called French River, communicates with Lake Nipissing."

This last *land's height* is the same mentioned by McKenzie and Henry, as dividing the waters of the Utawas River from those of Lake Huron. That to the southward of Lake Michigan, is that which divides

its waters from those of the Illinois River, a tributary of the Mississippi; and this *land's height* is a swamp, and at one place a pond, which, when swelled by rains, discharges its waters both ways, so as that a canoe may then pass, without being carried across, from Lake Michigan into the Illinois River.

\* It had already been shown, that the term "highlands," taken in a general and indeterminate sense, was well adapted to the purpose of designating, in the most general manner, the unexplored ground dividing certain specified rivers, along which the boundary line described in the treaty was intended to pass.

It has now been conclusively proved that, independent of its general sense, the word "*highlands*" is, in common, and as synonymous with "*height of land*," a term in general use in Canada, and in New England, for the purpose of designating, without any reference to its elevation or nature, any species of ground which divides rivers flowing in different directions, and the ground in which those rivers actually have their sources. And it has been also incontestably proved, that the designation of "*height of land*," (respecting the use of which for that purpose *exclusively*, there can be no doubt,) has been and is perpetually applied to the very *highlands*, which are by both parties acknowledged to be part of those described and intended by the treaty.

The appropriate use of that term, in the treaty, is therefore in every respect indisputable. And it must also be recollected, that it was borrowed from the proclamation of 1763, and other public acts of Great Britain; that the particular use of the term in that sense is of Canadian origin; and that it was for the first time used, and has been retained in subsequent public British acts, for the express and sole purpose of defining the boundary of Canada.

It is not unimportant to observe here, that the dividing highlands, acknowledged as such by both parties, do not appear to have every where that mountainous character which is required according to the British definition.

The Metjarmette Portage, which is common to the two conflicting lines, is of a similar character with those of the River Ouelle and of the Aliguash. The sources of the Metjarmette, of the Penobscot, and of the St. John, rise close to each other in the same swamp. The acknowledged highlands, for an extent of ten miles in a southerly direction from that Portage, are designated in Mr. Campbell's sketch as "*low land*." And the British Surveyor, Mr. Carlile, speaking of the height of land between the River Connecticut and the sources of the St. Francis, which is a tributary of the River St. Lawrence, says, that its sources are found in the same swampy ground, and a few rods from those of Indian and Hall's Streams, which empty themselves into the River Connecticut.

§ 4.

The term "Atlantic Ocean" how far contradistinguished from the Bay of Fundy, and from the Gulf of St. Lawrence.

The principal objection, on the part of Great Britain, to the boundary line claimed by the United States, is stated in the following words, in the first British Statement.

"The first point to be considered in treating this question is, whether the term *Atlantic Ocean*, as used in this part of the second article of the treaty of 1783, is not contradistinguished from the term *Bay of Fundy*. This is the cardinal point of the whole of this branch of difference (the north-eastern boundary) between Great Britain and the United States. With respect to that point, then, Great Britain maintains, that throughout the whole treaty of 1783, it is demonstrable by the letter of the treaty, as well as by collateral and inductive evidence, that the term "Bay of Fundy" is used as totally separate and distinct from the term "Atlantic Ocean;" and therefore, on this, as well as other separate and peculiar grounds, that the River St. John which falls into the Bay of Fundy is taken as distinct from those rivers which are described in the treaty as falling into the Atlantic Ocean."

The objection is, in substance, sustained on the following grounds :

1. That the term *Atlantic Ocean* is in itself a limited appellation, not including bays and gulfs, generally known by specific designations, (with the exception, however, of such bays as are merely expansions of the mouth of rivers ;) and that, as respects the rivers to be divided, the limitation of the term *Atlantic Ocean* is farther established, by its having been substituted in the treaty, for the more comprehensive expression *Sea*, which had been used in the proclamation of 1763.

2. And principally : that the term "Atlantic Ocean," even if understood in a more extensive sense, when used alone, is so limited and restrained, by that ocean being expressly contradistinguished in a clause of the treaty from the Bay of Fundy ; that this bay must, throughout the whole treaty, necessarily be taken as distinct from that Ocean ; and that the rivers, particularly the St. John, emptying themselves into the said bay, (or into the Gulf of St. Lawrence,) are not, within the meaning of the treaty, rivers that fall into the Atlantic Ocean.

3. That this position is confirmed by other considerations, principally drawn from the intentions of the negotiators of the treaty.

The meaning of the term *Atlantic Ocean*, when used alone, will be first examined.

"Sea," in its general sense, embraces the whole body of salt waters

on the globe. Some of its parts in Europe and Asia, have, from ancient and universal usage, preserved the name of sea, such as the Mediterranean, the Baltic, &c. ; but, as a whole, its great subdivisions are uniformly designated by the names of Atlantic, Pacific, Indian, Arctic, Antarctic Ocean ; and each of these is a generic appellation, embracing, when not specially or impliedly excluded, all the bays, gulfs, and inlets, which are only portions of such ocean, and formed by the indentures of the shores to which it does extend, or by adjacent islands.

The northern Atlantic Ocean extends from the European shores to those of North America. In its general sense, it embraces all the bays, gulfs, and inlets, though distinguished by distinct names, which are formed by the shores of Europe and North America. This is too generally admitted in geography to be denied.

The German, or North Sea "may be regarded as a part of the Atlantic Ocean, terminating at the straits of Dover ; whence the British channel extends to the west. The bay of Biscay is another large inlet of the Atlantic." (Pinkerton's Geography.)

"Scotland is bounded on the south by England, and on the north, east, and west, by the Deucalionian, German, and Irish seas, or more properly, the Atlantic Ocean." (Guthrie's Geog.)

The Atlantic Ocean, in the last instance is declared to embrace the Irish channel, and in both instances, it embraces the German sea, although there is no portion of the said Ocean more usually designated by its distinct appellation, than the German or North Sea.

Malte-Brun, in his geography, subdivides the Seas adjacent to the American Shores, into five portions or basins, viz :

1. Great or Pacific Ocean.
2. Unknown or Arctic Ocean.
3. Hudsons Bay.
4. North Atlantic Ocean ; in which he includes by name the river (and therefore the Gulf) St. Lawrence. And, as dependencies of the said Atlantic, he enumerates the Gulf of Mexico, and the Sea of Antilles.
5. South Atlantic Ocean.

It has never been disputed that, in their general geographical acceptance, the great divisions of the Sea embrace their subordinate subdivisions, nor that those subdivisions, including all inlets, bays and gulfs, are known by specific names. It cannot be denied, that, according to every rule of language, the generic term, when used alone, must be understood to embrace the subordinate subdivisions of the Sea or Ocean, known by that term ; and that, when a specific name is used, it applies exclusively to the particular inlet, gulf or bay, designated by that name. When thus used apart from each other, there is neither confusion nor

difficulty. The generic term embraces, the specific name designates the subordinate inlets: each is used with propriety as the occasion may require.

When the generic term Atlantic Ocean, and the distinct name of one of its inlets, are used in the same sentence, as contradistinguished from each other, the signification of the general term is thereby restrained; and it must be so understood as to exclude the inlet thus distinctly designated.

Thus, in the description of the boundary of East Florida, as defined by the proclamation of 1763, the signification of the term Atlantic Ocean is restrained, so as to exclude the Gulf of Mexico and what is there called the Gulf of Florida.

In that clause of the treaty, however, which specifies the rivers to be divided, and which is at this moment alone under consideration, the term "Atlantic Ocean" is not contradistinguished from, or united with, either of those, "Bay of Fundy" or "Gulf of St. Lawrence." It must necessarily, in its usual acceptation, and as the generic term, be understood there as including both those inlets, unless it can be shown that, as is true with respect to some of its other geographical subdivisions, the term "Atlantic Ocean," when used alone, has been usually understood as excluding those two inlets. The acceptation of terms, as generally used in common language, is a proper guide in the interpretation of treaties; and there are several European seas, which, though embraced by the geographical definition, are commonly considered as not included within the term "Atlantic Ocean."

The Mediterranean and Black Seas were the first known to the ancient civilized nations; they were therefore the first which received special appellations: and that of Mediterranean has been used from the earliest times to distinguish the sea, still known by that name, from the sea without the straits, at first called *Ocean*, and now Atlantic Ocean. By a parity of reasoning, the Baltic, being a close sea, was from its first discovery considered under that name, as distinct from the ocean.

Long usage has consecrated those expressions; and it will therefore be admitted, that although geographers, in their great divisions of the Ocean, consider those several seas as parts of the Atlantic Ocean, they are generally, in common language, taken as distinct; so as to render it doubtful whether the term "Atlantic Ocean," used by itself in a public document, could be properly understood to include those inland seas. But it may be confidently asserted, that in common language, as well as in its geographical acceptation, the term "Atlantic Ocean," when used alone, and its meaning is not restrained by some other expressions, has ever been held to embrace all the inlets, bays, and gulfs of the Ameri-



can coast; or, that if there has ever been any exception, it is solely that of the Gulf of Mexico.

Thus Governor Pownall, when speaking generally of the Atlantic Ocean, considers it as embracing even the Gulf of Mexico. "We know from observation how much higher the *Atlantic Ocean* is than the Pacific; and how it is piled up against the American coast on the western shore of the Gulf of Mexico, driven thither by the trade winds," &c.

It is declared, in the Proclamation of 1763, to be the royal will, that no Governor, or, Commander in Chief of our other colonies or plantations in America, do presume, for the present, and until our further pleasure be known, to grant any warrant of survey or pass patents, for any lands beyond the head or sources of any of the rivers which fall into the Atlantic Ocean from the west or north-west."

Those other colonies, lying between those of Quebec and East Florida, extended along that line of demarcation beyond which it was forbidden to grant lands, from the north-easternmost sources of the River Susquehanna which lie north of the 42d degree, to those of the Altamaha River in 33 degrees of north latitude.

The space occupied along that line by the sources of the Susquehanna, Potomac, James River and Roanoke, and their tributary streams, is more than one half of the whole extent of the line. And of those four rivers, the three first named empty themselves into the Atlantic Ocean, through the bay of Chesapeake; and the last, through an inland bay, known by the name of Albemarle Sound, which has no communication with the Sea, but through three narrow and shallow passes. It cannot therefore be doubted that in this instance; by rivers which fall into the Atlantic Ocean, those are meant which fall into its bays or inlets, as well as those which fall directly into the main Ocean.

In the case under consideration, not only is the generic appellation of "Atlantic Ocean" used as distinguished from, and contrasted with the River St. Lawrence alone; but every river not emptying itself into the said river, and intended to be divided, which was, or could possibly have been contemplated by the framers of the treaty of 1763, as falling into the Atlantic Ocean, falls into it through some intermediate gulf or bay, known, and, in Mitchell's map, designated by a specific and distinct name: that is to say; the River Ristigouche, through the Bay des Chaleurs, and the Gulf of St. Lawrence; the River St. John, through the Bay of Fundy; the Rivers Magaguadavic, (Mitchell's St. Croix) and Scoodiac, (Mitchell's Passamacadie) through the Bay of Passamaquoddy and the Bay of Fundy; the Penobscot through the bay of the same name; the Kennebec through the Sagadahock Bay; and the Connecticut River through Long Island Sound, which last inlet is as much a close and distinct sea or portion of the Atlantic Ocean as the

Gulf of St. Lawrence, and more so than the Bay of Fundy. So that if the rivers which fall into the Atlantic through a gulf, bay, or inlet, known by a distinct name, are not, under the treaty of 1783, rivers falling into the Atlantic Ocean, there is not a single river intended to be divided, to which the description applies.

Such bays as the Sagadahock and the Penobscot, are considered in the British Statements, as "merely the expansions of the mouth of rivers of which they bear the name, and to be regarded in no other light than as portions of the rivers themselves."

The assertion, that the term Atlantic Ocean does not generally embrace the bays and gulfs connected with it, rests on the fact that such gulfs and bays are designated as such; and that fact is as true of the Sagadahock and Penobscot Bays, as of the Bay of Fundy or of the Gulf of St. Lawrence. And if those Bays which are described in the British Statement, as the expansions of the mouths of rivers, can be regarded in no other light than as portions of the rivers themselves, those bays also which, like that of Fundy, are merely contractions of the Ocean, must necessarily be regarded only as portions of the Ocean itself.

It cannot, at all events, be denied, that Long Island Sound, through which Connecticut River empties itself into the Atlantic Ocean, is a large inlet of the Atlantic, of a more distinct and marked character than the Bay of Fundy; nor that the River Connecticut is, as much as the Penobscot and the Kennebec, one of the rivers described in the treaty, as falling into the Atlantic Ocean, and which are to be divided from the rivers falling into the St. Lawrence; since the boundary line extends along the dividing Highlands, as far as the north-westernmost source of that river, (c) and must pass along its more easterly sources.

Great stress is laid on the fact, that the rivers intended to be divided, or contradistinguished, from those emptying themselves into the River St. Lawrence, are defined in the Proclamation of 1763, and in the Quebec Act, as falling into the Sea; and, in the treaty, as falling into the Atlantic Ocean.

The word "Sea" is more comprehensive than the words Atlantic Ocean, not as including bays or gulfs, which are parts of the said Ocean, but because it also embraces the Pacific, Indian Oceans, and other great subdivisions which are no part of the Atlantic. And as none of those great subdivisions of the Sea, save the Atlantic Ocean, has any connexion with the subject matter of the Proclamation,

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(c) The Connecticut River rises in latitude  $45^{\circ} 10'$ , at the height of land; it has its birth . . . . . at the height of the land. (Fownall as already quoted.)

of the Quebec Act, or the Treaty ; as no other but the Atlantic lies adjacent to the countries designated in those three instruments, the words "Sea" and "Atlantic Ocean" are used there in the same sense. Several instances might be found ; (d) but what will altogether remove any doubt, in that respect, is that the two expressions are used as synonyms in the Proclamation itself, and that, too, with respect to rivers falling into the Sea or Atlantic Ocean.

The provision of the Proclamation last quoted, declares it to be the Royal will, that "No Governor, &c. of our other Colonies or Plantations in America, &c., do presume, &c. to grant warrants of survey, or pass patents for any lands beyond the heads or sources of any of the rivers which fall into the Atlantic Ocean from the west, or north-west," &c. And the Proclamation then proceeds to declare that the King does reserve under his Sovereignty and dominion for the use of the Indians "all the lands and territories lying to the westward of the sources of the rivers which fall into the Sea from the west, and north-west as aforesaid," &c.

It has been demonstrated, that the Highlands contemplated and described by the Proclamation of 1763, and by the Quebec Act, viz : the Highlands which divide the rivers that empty themselves into the River St. Lawrence from those which fall into the Sea, are the identical Highlands contemplated and described in the treaty of 1763, viz : the Highlands which divide those rivers, that empty themselves into the River St. Lawrence from those which fall into the Atlantic Ocean.

As this important fact has been questioned in the British Statements, it is necessary again to refer to the conclusive proofs given in the first section of this argument ; 1. that the north-west angle of Nova Scotia is placed, by the express terms of the treaty, on the highlands which divide the waters of the River St. Lawrence from the Atlantic Rivers : 2. that the mention in the treaty of the north-west angle of Nova Scotia, instead of defining only the north-east angle of the United States, could only be in reference to such an angle previously designated : 3. that such designation was accordingly found in the latest public acts of the British Government on that subject, namely the Proclamation of 1763, the Quebec act of 1774, and the Commissions of all the Governors of Nova Scotia subsequent to 1763.

By the Commissions of all the Governors of Nova Scotia, from the year 1763, to that of the 29th of July, 1782, issued to John Parr, who

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(d) In the Charter of Massachusetts, are found the following words, "*the Atlantic, or Western Sea, or Ocean.*" The British Agent under the commission of 1797, alluding to the southern boundary of the Province of Quebec as prescribed by the Proclamation of 1763, describes it, as highlands dividing the waters of the river St. Lawrence, from the rivers which fall into the Sea, or "*Atlantic Ocean.*"

was the Governor at the date of the Provisional Articles of Peace of November, 1782, and of the definitive treaty of September, 1783, that Province was declared to be bounded on the westward, by a line drawn from Cape Sable across the entrance of the Bay of Fundy to the mouth of the River St. Croix, by the said river to its source, and by a line drawn due north from thence, to the southern boundary of our Colony of Quebec; and, to the northward, by the said boundary, so far as the western extremity of the Bay des Chaleurs."

By the Commissions of the Governor of the Province of Quebec, from 1763 to 1774, the southern boundary of that Province was described in conformity with the Proclamation of 1763, as a line which "crossing the River St. Lawrence and the Lake Champlain in forty-five degrees of northern latitude, passes along the highlands which divide the rivers that empty themselves into the said River St. Lawrence from those which fall into the sea, and also along the north coast of the Bay des Chaleurs." And in the Commissions of Governor Carleton, of 27th December, 1774, and of that granted, on the 18th of September, 1777, to Frederick Haldimand, who was still Governor in November, 1782, and September, 1783, the said Province is, in conformity with the Quebec Act of 1774, declared to be "bounded on the south, by a line from the Bay des Chaleurs along the highlands which divide the rivers that empty themselves into the River St. Lawrence from those which fall into the sea, to a point in 45 degrees in northern latitude, on the eastern bank of the River Connecticut."

The north-west angle of Nova Scotia is declared, by the treaty, to be on the highlands which divide the Rivers that empty themselves into the River St. Lawrence, from those which fall into the Atlantic Ocean. That angle is proved to be identic with that north-west angle of Nova Scotia, which, by the previous Acts of the British Government, had been declared to be, on the highlands which divide the rivers that empty themselves into the River St. Lawrence from those which fall into the Sea. It necessarily follows that the highlands described in the treaty, as dividing the rivers that empty themselves into the River St. Lawrence from those which fall into the Atlantic Ocean, are precisely the same with those highlands described, in the previous Acts of the British Government, as dividing the rivers that empty themselves into the River St. Lawrence from those which fall into the Sea; and therefore, that the term "Atlantic Ocean," as used in that clause of the treaty, is synonymous with the word "Sea," as used in the previous Acts of the British Government.

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It is principally on the restricted sense in which, by the express terms of the treaty, the term Atlantic Ocean must in one clause be understood,

that Great Britain relies, in order to prove, that the River St. John cannot be considered as one of the rivers which, as falling into the Atlantic Ocean, is intended by the treaty to be divided from the rivers that empty themselves into the River St. Lawrence.

The argument is stated in the following words, in the first British Statement.

"That, in the first place, the Bay of Fundy is not to be considered as comprehended, under the Treaty, in the Atlantic Ocean, is clearly demonstrable, it is conceived, from the following considerations."

"In the second article of the Treaty of 1763, and in one of its most essential points of designation, viz : that of the extreme eastern and the extreme western Sea coast Boundaries of the United States, the Bay of Fundy and the Atlantic Ocean are specifically distinguished the one from the other ; the latter or extreme western boundary, being in explicit terms, described as terminating in the Atlantic, by name, while the former or extreme eastern boundary is, in equally explicit terms, described, as terminating in the Bay of Fundy, by name."

"The extreme western limit on the sea coast is described, as formed by a line drawn along the middle of St. Mary's River to the Atlantic Ocean. The extreme eastern limit is described as formed by a line drawn along the middle of the River St. Croix from its mouth in the Bay of Fundy, &c."

"That article after describing other parts of the general boundaries concludes thus :"

"Where the aforesaid boundaries between Nova Scotia on the one part, and East Florida on the other, shall respectively touch the Bay of Fundy and the Atlantic Ocean."

"If one of these two terms is to be taken as comprehended in the other, why specify both ? The declaration that the boundaries, eastern and western, of the United States, should touch the Atlantic at each extremity of the country, would surely have been amply sufficient for all purposes of delimitation, had not the term "Bay of Fundy" been intended as totally distinct from the term "Atlantic Ocean."

"In one part of the Treaty, then, the terms, "Bay of Fundy" and "Atlantic Ocean," are manifestly intended as distinct and separate the one from the other. But being so taken in one part, they must surely be equally so considered in every other part ; for it would be contrary to all reason and consistency to assign one meaning to a term in one clause, and a different meaning to the same term in another clause of the same instrument."

In the second British statement, it is likewise affirmed that, "nothing can be more clear or positive than the distinction established in the article of the treaty between the Atlantic Ocean and the Bay of Fundy."

. . . . . "In all the public documents (the proclamation of 1763, the charter to Sir William Alexander, the commission of Mr. Wilmot, Governor of Nova Scotia, the treaty of 1763, &c.,) the limits of the Bay of Fundy are substantially the same, and quite conformable to the geographical character of the place. The position and limits of the Bay of Fundy being thus clear, and the contradistinction between that bay and the Atlantic Ocean being equally so in the treaty when speaking of the sea coast, it follows beyond controversy, that according to the meaning of the treaty in this part of it, the Atlantic Ocean begins only where the Bay of Fundy ends, and that the framers of the treaty, when thus using the term Atlantic Ocean, had in view that part of the sea, which lies westward of the mouth of the Bay of Fundy. The American Statement must therefore of necessity, err, when interpreting the treaty in such manner as to suppose the Bay of Fundy included in the term Atlantic Ocean, as a general appellation applied to the Sea coast. The framers of the treaty, when describing St. Mary's River as going down to the Atlantic Ocean, and the River St. Croix as having its mouth in the Bay of Fundy, had no doubt, particularly in view the coast of the Atlantic Ocean, which terminates at the Bay of Fundy, where the name of that bay begins to have its appropriate and exclusive application."

"And this being the case, as beyond all controversy it was, is it credible, that in the very next line of the same instrument, the same men should have used the same term of Atlantic Ocean, intending that it should comprehend the whole coast together with the Bay of Fundy and the Gulf of St. Lawrence, both of which are particularly marked on the map, and are universally known by their distinctive appellations, and with a similar precision of limits, as the River St. Lawrence itself; these three names being, moreover, all of them used in the treaty without description, as sufficiently distinguishing the several places which they respectively designate?"

The facts are in substance correctly stated. The sweeping inference is altogether denied by the United States.

The treaty first describes the highlands, as dividing those rivers that empty themselves into the River St. Lawrence, from those which fall into the Atlantic Ocean.

In that clause, the Atlantic Ocean is contradistinguished only from the River St. Lawrence.

The treaty describes another part of the boundary as being, "down along the middle of St. Mary's River to the Atlantic Ocean. East by a line to be drawn along the middle of the River St. Croix from its mouth in the Bay of Fundy to its source."

Here the St. Mary's River is designated as having its mouth in the

Atlantic Ocean; and the River St. Croix as having its mouth in the Bay of Fundy.

Finally, the treaty, in reference to the Islands within twenty leagues of any part of the shores of the United States, describes them as lying between lines to be drawn due East from the points, where the *aforesaid* boundaries between Nova Scotia on the one part, and East Florida on the other, shall respectively touch the Bay of Fundy and the Atlantic Ocean.

In this clause the Atlantic Ocean is expressly distinguished from the Bay of Fundy: and the term is there limited and restrained, so as not to include the Bay of Fundy.

The question at issue is, whether, because in one part of the article, the Bay of Fundy is twice designated by its specific name, and once as contradistinguished from the Atlantic Ocean, the two terms must be considered as distinct and separate throughout the treaty: whether, because the meaning of the term Atlantic Ocean is, in one clause, restrained by an express limitation, it is to be considered, as having the same restricted sense in another clause, where it is used without that limitation.

The United States contend that it would be equally contrary to reason and common usage, to assign the same meaning to a term in one clause, which it may have in another clause of the same instrument, when it appears from the general tenor of the two clauses, and the expressions used in each respectively, that the term, in one is restrained by those expressions, and has, therefore, a narrower signification; whilst, in the other, it is used in a more general sense, or is restrained in a different manner.

In one of the clauses of the treaty, the term "Atlantic Ocean" is contradistinguished from, and must, in construing that clause, be held as distinct from the Bay of Fundy. In another clause of the treaty, the same term is contradistinguished from the River St. Lawrence alone, and must, accordingly, in construing that clause, be held as distinct from that river alone, and not from the Bay of Fundy, nor from any of the other inlets, which, in its general sense and common acceptation, are part of the Atlantic Ocean.

This is perfectly consistent with the appropriate rules of language by which every instrument must be construed.

"Man is superior in intelligence to all other animals. . . .  
. . . . The superior intelligence of man over woman is not  
universally admitted."

In the last part of the sentence the term man, being contradistinguished from Woman, embraces only the male sex. The same term man, in the first part of the sentence, does undoubtedly embrace both sexes.

Yet according to the mode of arguing of the British Agents, it would there exclude the female sex.

In the commissions of the Governors of Nova Scotia, from 1763 to 1783, in defining the boundaries of that Province which then included New Brunswick; the Bay of Fundy, the Gulf of St. Lawrence, and the Atlantic Ocean are each specially designated and distinguished from each other; the appellation of Atlantic Ocean being expressly confined to the main Ocean, exclusive of that Bay and Gulf, and to that portion of it only, which extends from Cape Breton to Cape Sable.

Now, whatever point of the line drawn due north from the source of the River St. Croix may be considered as the north-west angle of Nova Scotia; or, in other words, whatever point on that line may be considered as the point of intersection with the southern boundary of the Colony of Quebec, as described in the commissions of the Governors of that Colony; whether that point of intersection, or north-west angle of Nova Scotia, be Mars Hill, or any other point north of it; it is impossible to draw any line whatever, from that point of intersection or north-west angle of Nova Scotia, to the western extremity of the Bay des Chaleurs, which will or can divide from each other, cross, or touch any other river or rivers whatever, but such as fall, either into the River St. Lawrence, the Gulf of St. Lawrence, or the Bay of Fundy.

No river whatever falls into that portion of the Atlantic Ocean which extends from Cape Breton to Cape Sable, but such as have their sources within the Peninsula or present Province of Nova Scotia, south of the Bay of Fundy, of the Gulf of St. Lawrence, and of the Isthmus which separates those two inlets. It is impossible that any such river should be, either divided from other waters, intersected or touched by any line, that can be drawn from any point, north of the source of the River St. Croix, to the western end of the Bay des Chaleurs.

The rivers therefore which, according to the designation of the southern boundary of the Colony of Quebec, or northern boundary of Nova Scotia, are to be divided, by that boundary, from the rivers emptying into the River St. Lawrence, and are there described, as rivers falling into the sea, (a term used in the Proclamation of 1763 as synonymous with Atlantic Ocean,) must of necessity be those, and those alone, which fall either into the Bay of Fundy, or into the Gulf of St. Lawrence.

Thus, although the term "Atlantic Ocean" is, in one part of the description of the boundary, used in a limited sense, and exclusive of the Bay of Fundy and of the Gulf of St. Lawrence; its synonymous term "Sea," in another part of the description, and in reference to the division of the rivers which are intended to be divided by the treaty, embraces and embraces nothing but that Bay and Gulf.

It may be affirmed, as a universal and invariable rule of language,



that the true sense of words which, either are themselves, or, by some adjunct or limitation, may be susceptible of more than one meaning, is ascertained by the other words used, or by the general sense of the particular sentence, in which such words respectively occur.

The following paragraph occurs in the first British Statement :

"It was evidently determined in this very important part of the boundary to divide from each other at their sources the several great rivers assigned to each power. Such intent the expression "Highlands which divide" plainly denotes ; for what could be the object of selecting highlands at all in reference to rivers, if those rivers were to be divided by the line of boundary indiscriminately, either at their sources or in any part of their course?"

The line of boundary last mentioned is the due north line : and the passage is not quoted for the sake of its logic, but only to show, that the word "to divide," in the first part of the paragraph, means, to separate rivers from each other, whilst, in the latter part, the words "to be divided" mean, to be crossed or intersected.

In order to give any semblance of plausibility to the British argument, it would be necessary to prove, that there was no possible reason or motive for designating River St. Croix as having its mouth in the Bay of Fundy, and for contradistinguishing that Bay from the Atlantic Ocean, other than the purpose of limiting throughout the treaty the meaning of the term Atlantic Ocean, so as to exclude the River St. John from the class of rivers contemplated by the treaty as falling into the Atlantic Ocean.

If it can therefore be shown, that there was a natural reason, or special motive for inserting that designation and making that distinction in those clauses ; and that such reason and motive were applicable to those clauses alone, there will not remain even a pretence for asserting that the distinction, thus made in a part of the treaty for a particular purpose, can be construed to extend to another clause, to which the distinction and the reasons for it were wholly inapplicable.

The United States are declared by the treaty, to be bounded "south by a line to be drawn . . . . . along the middle of St. Mary's River to the Atlantic Ocean. East, by a line to be drawn along the middle of the River St. Croix, from its mouth in the Bay of Fundy to its source ; . . . . . comprehending all islands within twenty leagues of any part of the shores of the United States, and lying between lines to be drawn due east from the points, where the aforesaid boundaries between Nova Scotia, on the one part, and East Florida, on the other, shall respectively touch the Bay of Fundy and the Atlantic Ocean."

And it is urged, that the last designation of the Bay of Fundy must

have been for some other purpose, than in reference to the Eastern Boundary of the United States ; since, had there not been another object in view, it was unnecessary to mention that Bay ; and the lines might have been described as correctly, by using the words, " due East from the points, where the aforesaid Boundaries between Nova Scotia, on the one part, and East Florida on the other, shall respectively touch the Atlantic Ocean."

The Eastern extremity of the Southern Boundary of the United States was, in the first instance, designated to be the point where the St. Mary's River touched, or had its mouth, in the Atlantic Ocean. And the Southern extremity of their Eastern Boundary was likewise designated to be the point where the River St. Croix had its mouth in, or touched, the Bay of Fundy.

All the Islands, between lines to be drawn due East from those two points, were afterwards declared to be comprehended within the United States. In designating, therefore, in the last sentence, those two points, precision of language required, that they should be described in the same terms as in the preceding sentence, where they had been designated, as respectively touching the Bay of Fundy and the Atlantic Ocean. It would have been a most incorrect and inapposite use of language, after those points had thus been designated, to have immediately after described them as the points where the *aforesaid* Boundaries shall respectively touch the Atlantic Ocean.

The apparent distinction, therefore, made in the last sentence, between the Bay of Fundy and the Atlantic Ocean, is only in reference to those two points, and arises from the manner in which they had been respectively designated in the preceding sentence. It is solely because the River St. Croix is, in the first instance, described as having its mouth in the Bay of Fundy, that it became again necessary and proper to designate, in the last instance, the point from which the East line was to be drawn, (namely the mouth of the River St. Croix,) as touching that Bay. Why the River St. Croix was thus described, can alone require an explanation : and it will now be shown, that there was for this a natural, and on the part of the American Negotiators, an important reason.

It has already been seen, that the River St. Croix was designated in the same manner in the original grant of Nova Scotia to Sir William Alexander, for the necessary purpose of describing, with precision, the position of a river, then hardly known in England, and on which the name of St. Croix had been imposed, but a few years before by the French. The same designation was adopted in the description of the Boundaries inserted in the commissions of the British Governors of that Province. After the negotiators of the treaty of 1783 had finally agreed to confirm the River St. Croix, as the Boundary between the dominions

of the two Powers, it was natural that they should, and it would indeed have been an extraordinary course, if they had not adopted the same terms, in describing the situation of the river, which had been so long in use in the public British documents, and which had been preserved uninterruptedly to the very date of the treaty. (e)

This mention of the fact that the River St. Croix had its mouth in that inlet of the Atlantic Ocean known by the name of Bay of Fundy, can have no more effect on other clauses of the treaty than in Alexander's Grant, or the Governors' Commissions. And it has already been shown, with respect to both, that notwithstanding that specific mention by name of "Bay Fundy" and of "Gulf of St. Lawrence" in the description of the boundary, both that bay and gulf were embraced by the generic term used in another clause.

But there was also another and peremptory reason why the American negotiators must have insisted that the River St. Croix should continue to be designated as having its mouth in the Bay of Fundy.

The repeated attempts, on the part of the crown, to encroach in that quarter on the chartered boundaries of the Province of Massachusetts' Bay, have already been mentioned in the Introduction. The Government of Nova Scotia, pursuing the same course, had in the year 1765 made a large grant of land to Francis Bernard, and others, *west* of the Schoodic River, which has ultimately been decided to be the true St. Croix. That Government had, also, in the year 1767, granted to William Owing, and others, the island now known by the name of Campo Bello. That island is situated south of a line drawn due east from the mouth of the Schoodic. That of Grand Menan, according to Mitchell's Map, lies chiefly *west* of the line designated in the Commissions of the Governors of Nova Scotia, as a line "drawn from Cape Sable across the entrance of the Bay of Fundy, to the mouth of the River St. Croix," or Schoodiac. Both have finally been adjudged to Great Britain, as being in 1788, or having theretofore been, within the *limits* of Nova Scotia.

A conclusive proof of the general prevailing uncertainty as to what river was the true St. Croix, will be found in the topographical description of the Middle British American Colonies, published in 1776, by T. Pownall, M. P. for several years Governor of His Majesty's Province of Massachusetts' Bay, and which has been quoted with a high encomium in the British Statement. His words are :

"The River Passam-Aquâda, or Possam-Accâda, which runs into a

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(e) In the Commission to Governor Parr, dated 29th July, 1782, the words are, "bounded on the westward by a line drawn from Cape Sable across the entrance of the Bay of Fundy, to the mouth of the River St. Croix, by the said river to its source," &c.

bay so called, is the supposed eastern boundary of New England ; to the east of this begins Aquâda or Nova Scotia ; *an uncertain River St. Croix* is the nominal boundary. But as the French, according to their mode of taking possession, always fixed a cross in every river they came to, *almost every river on this coast of Sagadahoc has in its turn been deemed by them La Riviere de St. Croix.* Under equivocation of this general appellation, they have amused our negotiators on every occasion."

It will be recollected that by "Sagadahoc" is meant the ancient grant to the Duke of York, or that tract of land described in the Charter of Massachusetts, as lying between Nova Scotia and the (old) Province of Maine ; that it is thus laid down in Mitchell's Map ; and that as the "Coast of Sagadahoc" extends accordingly from the Bay of Passamaquoddy to that of Sagadahoc, (or Kennebec,) it was according to Pownall uncertain, which of the rivers between those limits was the true St. Croix.

Whether the fact alleged there, with respect to the French, was correct or not, is immaterial ; nothing can show more forcibly how general was the opinion of the uncertainty arising from that cause, than to find it entertained by a late Governor of the Province of Massachusetts' Bay, one of the men of the time best acquainted with American affairs, and asserted by him thirteen years after the cession by France of all her possessions in North America, when there was no longer any motive for misrepresentation, or cause for prejudice.

In the same manner, Mr. Jay, one of the negotiators of the Treaty of 1783, in his deposition laid before the Commissioners appointed pursuant to the fifth Article of the Treaty of 1794, expresses himself as follows : " In settling the boundary line (described in the Treaty,) and of which the River St. Croix forms a part, it became a question, *which of the rivers in those parts was the true River St. Croix ; it being said that several of them had that name.* They did finally agree that the River St. Croix, laid down on Mitchell's Map, was the River St. Croix which ought to form a part of said boundary line."

So strongly impressed was that belief, that it is found again asserted, twenty years later, in the argument addressed in 1797 by the British Agent to the said Commissioners, (who were appointed only to decide which river was the true St. Croix,) when the Agent was arguing that the Schoodic and not the Mâgaguadavic, (Mitchell's St. Croix,) was the river intended by the Treaty of 1783.

After adverting to an Act of Parliament of the year 1774, (15 Geo. III. ch. 10,) for restraining the trade of Massachusetts' Bay, and other colonies, in which it is enacted, "that the river which emptieth itself in Passamacadie or Passamaquoddy Bay, on the western side, and is commonly called and known by the name of St. Croix River, be held and deemed, for all the purposes in this act contained, to be the boundary

line between the Provinces of Massachusetts' Bay and Nova Scotia ;” and after asserting that the river thus designated, was that contemplated by the Treaty of 1783, and which ought accordingly to be declared the true River St. Croix, the British Agent proceeds as follows :

“If this principle were once departed from, there would be no check to contention on the subject, though it would be fortunate to His Majesty's interests if he were not thus bound ; as it might be clearly shown in that case, that the *River Penobscot, once indiscriminately with the other rivers upon this coast called the St. Croix, was the true boundary* by which Nova Scotia or Acadia was ceded to His Majesty by the Treaty of Utrecht, and ought in such case, by the principles of the laws of nations, to be established as the *eastern boundary of the United States.*”

And he again says, in answer to the Agent of the United States, who contended that the Magaguadavic was the true St. Croix :

The argument of the Agent of the United States would certainly apply with much greater force in proving the *Penobscot* to be the river agreed to ; as *this river, besides being once known indiscriminately with the other rivers by the name of St. Croix, has been the reputed boundary of Nova Scotia, and was contended for as such by the British Commissaries at Paris, in the year 1750, in their memorials concerning the limits of Acadia or Nova Scotia.*”

It will be readily perceived, that since the River St. Croix had, by the Treaty of 1783, been declared to be the boundary, the *Penobscot* could not, in the year 1797, have been claimed as such on any other ground than as being itself the true St. Croix. The British Agent asserts that it ought, and would under the Treaty, have been considered as such, had not a previous act of Parliament declared the St. Croix to be a river which emptieth itself into Passamaquoddy Bay. But that act would have given no security against an attempt on the part of Great Britain to claim the *Penobscot* as the true St. Croix and the boundary intended by the treaty ; since the River St. Croix, that empties itself into the Bay of Passamaquoddy, is, by the act of Parliament, to be held and deemed the boundary between the Provinces of Massachusetts' Bay and Nova Scotia, *only for the purposes contained in the act* ; and since that temporary enactment, made for the special purpose of embracing within the provisions of the restraining act all the population west of Passamaquoddy Bay, had expired with the act itself. (f)

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(f) The reason why the British Agent adverted to the Act of Parliament which was inapplicable, and not to the Treaty, is obvious. He was attempting to show that the westernmost of the two rivers that empty themselves into Passamaquoddy Bay, was the true St. Croix. The Act of Parliament had made a provision to that effect ; and the treaty had only generally declared the mouth of the River St. Croix to be in the Bay of Fundy.

It was that provision in the treaty itself, declaring the mouth of the River St. Croix to be in the Bay of Fundy, which afforded the security required in that respect.

Under the prevailing belief, that the designation of a River St. Croix, by that name only, was not sufficient to determine which river was the true St. Croix, and with the knowledge of the anxious desire evinced by Great Britain to extend, under color of that uncertainty, the boundaries of Nova Scotia to the Penobscot, the insertion of that provision in the treaty was of paramount importance to the United States.

By declaring the mouth of the River St. Croix to be in the Bay of Fundy, the only question which might remain susceptible of doubt, was, which of the two rivers that empty themselves into Passamaquoddy Bay was entitled to the designation of River St. Croix? The western extremity of the last mentioned bay, or at the farthest of Grand Menan Island, forms also the Western extremity of the Bay of Fundy, as will be seen by Mitchell's Map, by the Map A, and by reference to what is described as the entrance of the Bay of Fundy, in Sir William Alexander's Grant. Not only was every pretence to claim the Penobscot, as the true St. Croix, removed by that provision, but no river whatever could be claimed as such, that lay west of Passamaquoddy Bay; since, as will appear by Mitchell's Map, Machias River, which is the next in that direction, lies west of the Western extremity of Grand Menan Island.

It may, perhaps, be asked why, with Mitchell's Map before them, where the mouth of the River St. Croix is laid down, as it really is; in Passamaquoddy Bay, which is there designated by its distinct name, that river was not, in the treaty, declared to have its mouth in that bay, instead of the Bay of Fundy?

Such specific designation of the Passamaquoddy Bay was unnecessary; since it would not have rendered the description more precise, with respect to the object in view. Every river west of the Island of Grand Menan was equally excluded, whether the mouth of the River St. Croix was declared to be in the Bay of Fundy, or in that of Passamaquoddy; and either designation would have left it equally doubtful, which of the two rivers was the true St. Croix. The negotiators being unacquainted with the Indian names of the rivers in that quarter, could not have used expressions more precise than those of the designation which they adopted, and which had prevailed from the date of Sir William Alexander's Grant to that of the treaty.

It will not now be denied that there were cogent reasons, abundant cause, for designating in a special manner, with as much precision as could be obtained from the materials in hand, the place where the mouth of the intended River St. Croix was to be found. Notwithstanding the precautions taken in that respect, the river contem-

plated by the negotiators, that which in Mitchell's Map bears the name of St. Croix, has not been confirmed as the boundary between the two countries. The Schoodiac, the most *westerly* river that empties into Bay of Fundy, has been decided to be the true St. Croix. But from what has been stated, and indeed, judging from the arguments adduced in support of the claim now advanced by Great Britain, it may be fairly presumed, that the field of English pretensions would have been extended far beyond the Schoodiac, had it not been limited to rivers having their mouth in the Bay of Fundy.

Can it be now pretended that this precaution, the special designation made for a particular and obvious object, necessary in order to obtain the object to which it applied, was intended and can be made to extend to another object, and to have an effect on the construction of another and distinct provision of the treaty? Can it be contended that, because it was necessary to specify in what part of the Atlantic Ocean the River St. Croix emptied itself, it follows, that when speaking, in another clause of the treaty, of that Ocean, not in reference to that part, but as *contra-distinguished* exclusively from the River St. Lawrence, it must be so understood, as to exclude that part of it, (the Bay of Fundy,) which, for that particular, and for no other reason, it had been requisite so to specify? It is obvious, that it is only in case there had been no necessity to use the designation of "Bay of Fundy" where it is used, that there would have been any color for the pretended inference, that that designation was made for all the purposes of the treaty, or was intended to control the construction of any other of its provisions.

It is believed, that it has been demonstrated in the most conclusive manner, not only that the line contended for on the part of Great Britain is in direct violation of the clear and express terms of the treaty, but that no other line than that claimed by the United States, can be reconciled with that condition of the treaty which expressly requires the line to be on those highlands which divide rivers as there described. The objections raised against that line rests only on inferences; on the assumed supposition, that the limited sense, in which the term Atlantic Ocean must be understood in one clause, must necessarily be the meaning of the term in every other clause of the treaty. It has been shown that the general assertion is irreconcilable with the ordinary rules of language, and that, as applied to the special case under consideration, it is altogether erroneous. And no stronger proof can be adduced of the unsoundness of the argument, than that it necessarily leads to the conclusion, that the boundary line prescribed by the treaty is impossible, and therefore irreconcilable with any intentions that can be ascribed to the negotiators.

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It is urged in the British Statements, that the arguments adduced on the part of Great Britain, with respect to the Bay of Fundy and the River St. John, apply with still greater force to the Bay des Chaleurs and the River Ristigouche; first, because that Bay does not open directly into the Atlantic, but into a second bay, namely, the Gulf of St. Lawrence; secondly, because both the bay and the river are still further removed from the extreme eastern limit of the United States; and also, because the gulf is mentioned in the treaty, in a manner which distinguishes it entirely from the Atlantic Ocean, except in so far as it is a part of the Sea, of which the Atlantic Ocean also is a part.

The facts, that the Ristigouche empties itself into the Gulf through the Bay des Chaleurs, and that its mouth lies far east of the due north line, are evidently irrelevant to any question at issue. The Gulf of St. Lawrence is designated by its specific name, in but one sentence of the treaty. It is provided, by the third article, "that the people of the United States shall continue to enjoy unmolested the right to take fish of every kind on the Grand Bank, and on all the other Banks of Newfoundland; also in the Gulf of St. Lawrence, and at all other places in the Sea, where the inhabitants of both countries used at any time heretofore to fish."

So far from this provision having any bearing on the clauses, in which the rivers falling into the Atlantic Ocean are mentioned, that the only question which arises, is, why the Gulf of St. Lawrence was at all mentioned, since the provision would have apparently been as complete, had that name been omitted, and the clause had simply declared the right to take fish, to extend to "all places in the Sea, where the inhabitants of both countries used heretofore to fish."

The reason was, that the Gulf of St. Lawrence being a close Sea, the shores of which did belong to Great Britain exclusively, a doubt might have arisen whether, notwithstanding the general provision, the people of any other nation could fish there without an express stipulation to that effect. Although the Gulf of St. Lawrence is actually declared in the clause to be a place in the Sea, it was deemed proper to name it expressly, by way of greater caution, and in order to remove every possible doubt on that subject. And the meaning of the clause is, that the people of the United States shall have the right to fish at all places in the Sea, where, &c., without even excepting the Gulf of St. Lawrence, and although this might be considered as under the exclusive jurisdiction of Great Britain.

The Gulf of St. Lawrence is, in that clause, assimilated to the Banks of Newfoundland; both being declared to be places in the sea: and what sea was meant cannot be doubted, unless it should be denied that the Banks of Newfoundland are in the Atlantic Ocean.



Numerous instances have already been adduced showing, that, both in its general sense and usual acceptation, the term Atlantic Ocean is always understood, as including the Gulf of St. Lawrence. And it must be recollected, that that Gulf is not liable to the objection, to be in another clause of the treaty contradistinguished from that Ocean.

Amongst other proofs, reference may be made to the commissions of the Governors of New Brunswick, in which the Atlantic Ocean embraces no other portions of the Sea than that Gulf and the Bay of Fundy.

In the grant to Sir William Alexander, the term *Seas* is uniformly used instead of that of Atlantic Ocean. That the words are, as to the object of the grant, perfectly synonymous, and that they were so understood, appears from a publication of the year 1624, by the grantee himself, where, speaking of the limits of his patent, he says, "leaving the limits to be appointed by his Majesty's pleasure, . . . . . with New England; and on all other parts it is compassed by the Ocean and the great river of Canada."

Another instance will be mentioned, where the meaning and effect of the expressions used were considered with deliberate attention.

In the course of the Gheut negotiations, the British plenipotentiaries, at the conference of 1st December, 1814, proposed the following article.

"That all vessels and effects which may be taken, after the space of twelve days from the period of the exchange of the said ratifications, upon all parts of the coast of North America, from the latitude of 23 degrees north to the latitude of 47 degrees north, and as far eastward in the Atlantic Ocean as the 65th degree of west longitude, from the meridian of Greenwich, shall be restored on each side.—That the term shall be thirty days in all other parts of the Atlantic Ocean, as far eastward as the entrance of the British Channel, and southward as far as the equinoctial line or equator; and the same time for the Gulf of Mexico and all parts of the West Indies.—Forty days for the British Channel and the North Seas; the same time for all parts of the Mediterranean.—And one hundred and fifty days for all other parts of the world, without exception."

The words used in reference to the period of twelve days, viz: "upon all parts of the coasts of North America," embrace, of course, all the adjacent Bays and Gulfs as far north as the latitude of 47 degrees. But it will be seen, by referring to any map, that that parallel of latitude touches the northern extremities of the Islands of Cape Breton and St. John, leaving, south of it, a very small portion only of the Gulf of St. Lawrence. Almost the whole of that gulf, (including the entrance of the river of the same name, the Straits of Belisle, and those which lie between Cape Ray, of Newfoundland, and the North Cape of Cape Bre

ton,) lies north of that latitude, and is not, therefore, included within the provision limiting the captures to twelve days.

The Gulf is not included in the forty days' provision, which applies only to the British Channel, the North Seas, and the Mediterranean. And it must, therefore, have been necessarily comprehended in the term of thirty days, which extends to *all other parts of the Atlantic Ocean* as far east as the British Channel, and south as the Equator; unless it should be supposed to have been included in the term of "150 days for all other parts of the world without exception:" and this supposition is untenable.

The Gulf of St. Lawrence, particularly the Straits above mentioned and the entrance of the River St. Lawrence, are the highway, and form the only outlets for the whole trade between Great Britain and Quebec; a trade which was, at that time, carried on exclusively in British vessels. To have, therefore, included that gulf within the term of 150 days, would have been tantamount to a permission to the American armed vessels and privateers, coming from ports within fourteen days sail of the entrance of the gulf, to intercept and capture, without any difficulty and with impunity, the whole of that trade, during the space of more than four months. This is too absurd to have been intended by the British Plenipotentiaries: and what proves, beyond doubt, that such was not their intention, is, that the period for allowing captures in the gulf was ultimately made *not longer* but *shorter than thirty days*: which was effected, by extending the period of twelve days "upon all parts of the coast of North America," as far north as the latitude of 50 degrees.

It must also be observed, that the British Plenipotentiaries, in making that proposal (of the 1st December, 1814), had duly attended to the propriety of specifying, by their distinct names, those outlets or seas respecting which there might be some doubt; and which from long and common usage might be considered as not included within the term "Atlantic Ocean." Amongst others, "the Gulf of Mexico and all parts of the West Indies" were distinctly specified, as coming within the term of thirty days; and the gulf of St. Lawrence was not named, it being perfectly well understood, that it was of course included in the term "all other parts of the Atlantic Ocean."

It cannot, therefore, be doubted, that the rivers which fall into the Gulf of St. Lawrence, are clearly embraced by the term, "Rivers that fall into the Atlantic Ocean;" and that the north-west angle of Nova Scotia and the boundary line, extending thence westwardly, designated in the treaty as being "on and along the highlands which divide the rivers that empty themselves into the River St. Lawrence, from those which fall into the Atlantic Ocean," may, in strict conformity with that provision, be placed on and along highlands dividing the tributary streams of the River St. Lawrence, from those of the River Ristigouche.

The boundary between Nova Scotia and the Province of Quebec was not a subject coming within the purview of the Treaty of 1783 ; and it might be altered at any time subsequent to the treaty by the British Government. Yet, the north-west angle of Nova Scotia, for whatever purpose alluded to, is, by the treaty, declared to be formed by the intersection of the due north line, with the highlands which divide the rivers emptying themselves into the River St. Lawrence from those that fall into the Atlantic Ocean. Such highlands must necessarily extend eastwardly from the summit of that angle ; and they are therefore acknowledged by the treaty to be, as they had been ever since 1763, the southern boundary of the province of Quebec, and the northern boundary of Nova Scotia. This, though only as a subsidiary argument, authorizes a reference to the effect which that boundary may have on the determination of the north-west angle.

It is preposterous to say, that a line described as dividing rivers from each other, may intersect the largest river in the Province, and that the bed of that river may, in any sense of the word be deemed "highlands." And no line can be drawn, in an eastwardly or northeastwardly direction from Mars Hill, or from any other point on the due north line south of the River St. John, which will not, within a few miles, intersect the River St. John and sink to its level.

No line can be drawn in the same direction, from any point on the due north line south of the River Ristigouche, which will divide the tributary streams of the River St. Lawrence from any other River, or which can divide, from each other, any other rivers, but rivers falling into the Gulf of St. Lawrence, from rivers falling into the same Gulf or into the Bay of Fundy.

It is only from the termination of the due north line, which, as the United States maintain, is the north-west angle of Nova Scotia, that an eastwardly line can be drawn ; which, in conformity with the expressions used in the treaty and in the previous public acts of Great Britain, will, at least for some distance, divide rivers emptying into the River St. Lawrence, from rivers flowing in a different direction. This necessity common to the highlands of the treaty and to those of the Proclamation of 1763 and of the Quebec Act, identifies them together. And, since the last mentioned rivers can be no other than the tributary streams of the Ristigouche, which, through the Bay des Chaleurs, falls into the Gulf of St. Lawrence ; this also affords another conclusive proof, that the term Atlantic Ocean, as used in that clause of the treaty, must necessarily have embraced the Gulf of St. Lawrence.

§ 5.

Negotiations of 1782.

In the discussion respecting the intentions of the negotiators of the treaty of 1783, resort has been had principally to the negotiations which preceded the conclusion of the treaty, to the influence which former boundaries may have had on their deliberations, and to the knowledge which they had of the topography of the country.

The Congress of the United States, on the 14th of August, 1779, agreed to a draft of instructions to the Commissioner to be appointed to negotiate a treaty of peace with great Britain. As part of those instructions, the boundaries of the United States are declared to be as follows, viz :

“ These States are bounded north by a line to be drawn from the north-west angle of Nova Scotia, along the Highlands which divide those rivers that empty themselves into the River St. Lawrence, from those which fall into the Atlantic Ocean, to the north-westernmost head of Connecticut River ; . . . . . and east, by a line to be drawn along the middle of St. John River, from its source to its mouth in the Bay of Fundy. . . . . If the eastern boundary above described cannot be obtained, you are hereby empowered to agree, that the same shall be afterwards adjusted by Commissioners, to be duly appointed for that purpose, according to such line as shall be by them settled and agreed on, as the boundary between that part of the State of Massachusetts’ Bay, formerly called the Province of Maine, and the Colony of Nova Scotia, agreeably to their respective rights.”

In a report of a Committee of Congress, presented 16th of August, 1782 ; it is confessed that the eastern part of Massachusetts, “ which goes by the name of Sagadahock, cannot be proved to extend to the River St. John as clearly as to that of St. Croix.”

Congress had, previously, by their final instructions of the 15th of June, 1781, modified those of the 14th of August, 1779, and directed their Ministers “ to accede to no treaty of peace which should not secure the independence and Sovereignty of the Thirteen States, or inconsistent with the treaties subsisting between them and France ;” upon every other subject tying them up by no absolute and peremptory directions ; but still referring to the former instructions as expressive of the desires and expectations of Congress.

In conformity with those instructions, Benjamin Franklin and John Jay, two of the Commissioners of the United States, in the first propo-

sitions made by them, and agreed upon on the 6th of October, 1782, between them and Richard Oswald, the British Commissioner, (but to be submitted to His Britannic Majesty's consideration,) defined the Boundaries of the United States in precise conformity with the first part of the instructions of 14th August, 1779.

But these being objected to, the other alternative, as contained in the subsequent part of the same instructions, was substituted, agreed to before the articles were sent to London, and a memorandum to that effect annexed to them in the following words, viz: "Alteration to be made in the treaty respecting the Boundaries of Nova Scotia, viz: east, the true line between which and the United States shall be settled by Commissioners, as soon as conveniently may be after the war." (a)

Counter-proposals were transmitted from London, which have not been preserved. (b) It appears only that much contestation took place about the Boundaries and other articles; the British contending, at first, that Nova Scotia should extend to the River Kennebec; then to Penobscot; and, at length, agreeing to the River St. Croix; and one of the American Ministers at first proposing the River St. John, but on the observation that St. Croix was the River mentioned in (c) the Charter of Massachusetts' Bay, agreeing with them to adhere to the said Charter.

Whatever may have passed in conversation, or in the course of the negotiations, it is certain that the American Commissioners had first proposed the River St. John as the Boundary; that, for that proposal, they substituted that of leaving the true boundary line between Nova Scotia and the United States, to be settled by Commissioners, after the peace, to which the British Commissioner agreed provisionally; that the British Government rejected both propositions; and that, it was ultimately agreed, instead of leaving the boundary in that unsettled situation, to define it in the treaty itself.

The following particulars are declared, in the British Statement, to be collected from those various instructions, propositions and transactions.

1st. That the mouth of the River St. John was, from the first, specifically described as being in the Bay of Fundy, while the Bay of Fundy was described, as distinct from the Atlantic Ocean.

2dly. That the north-west angle of Nova Scotia was deliberately placed

(a) See the Article at large in the Introduction.

(b) The Paper No. 2, mentioned in Dr. Franklin's Letter of 5th December, 1782, has not been found in the Archives of the United States, and has not been adduced in evidence by the British Government.

(c) The River St. Croix is not mentioned in that Charter. The statement should have been, that it must be inferred from the Charter, as connected with other documents, that the St. Croix was the Boundary.

by the Americans themselves at the source of the River St. John ; which source and north-west angle were by them taken as identical.

3dly. That the highlands intended to divide the rivers falling into the Atlantic Ocean from those falling into the St. Lawrence, are (in the American projet) described in the very same terms which they now retain in the definite treaty of 1783.

Whence it is inferred, "that the highlands designated in the projet, being then intended to divide the Androscoggin, Kennebec, and Penobscot Rivers, alone, from those falling into the St. Lawrence, to the exclusion of the St. John, the highlands so described are still intended to divide the same rivers ; and that from those rivers, therefore, the St. John is still intended to be excepted."

The place of beginning, or north-west angle of Nova Scotia, is in the projet, stated to be at the source of the River St. John, and in the treaty, at the intersection of the highlands with the line drawn due north from the source of the River St. Croix. If the source of the River St. John, contemplated by the projet, was, as asserted on the part of Great Britain, the source of the southernmost branch of that river, or supposing it to have been the source of either, the north-west, the west, or the south west branch of the river, (thus called in Map A.) in either case the source thus contemplated, or north-west angle of Nova Scotia of the projet, was from ninety to one hundred and twenty miles west of the due north line.

It cannot therefore be seriously argued that, because the north-west angle of Nova Scotia of the projet, and the highlands extending from that point to the Connecticut, might not divide any other rivers than the Penobscot and Kennebec, (to the exclusion of the St. John,) from the rivers falling into the St. Lawrence ; the north-west angle of Nova Scotia of the treaty (distant about one hundred miles from that of the projet according to the British,) and the highlands beginning at that point and extending thence to the Connecticut, must divide from the Rivers falling into the St. Lawrence, no other rivers but the Penobscot and the Kennebec, to the exclusion of the St. John.

But the source of the most southern branch of the St. John was not known in the year 1782. The first discovery of that, apparently the longest branch of the river, is due to the explorations made in the year 1818, 1820, under the Ghent Commission. And, if known in 1782, it is impossible that it should have been that which the United States had in view. The source contemplated in their projet was on the highlands, which divide the rivers that empty themselves into the River St. Lawrence from those which fall into the Atlantic Ocean. And the southern source above described, lies more than ten miles East of any part of those high-

lands, and issues from the highlands which divide the Penobscot from the St. John.

On the contrary, independent of another circumstance which will be immediately adverted to, the place of beginning or north-west angle of Nova Scotia was, in conformity with the terms of the projet, placed on the very highlands which are described as dividing the St. Lawrence from the Atlantic Rivers, including therefore the St. John among the rivers falling into the Atlantic. And, unless it was proved, which cannot be done and is highly improbable, that the source contemplated in the projet was the nearest possible to some one source of the Penobscot, it is evident, that the highlands of the projet must for some distance have divided waters of the St. John from those of the St. Lawrence.

It is further insisted, that, as the original claim on the part of the United States did not extend beyond the River St. John; and as a new and more contracted line was ultimately agreed on and substituted for that first proposed line, which had been rejected by Great Britain; it is impossible to suppose that that new line should have left to the United States a territory north of the River St. John, not included in their first claim.

The American claim alluded to was avowedly founded on the erroneous supposition, that the chartered boundaries of Massachusetts' Bay extended along the Sea coast eastwardly to that river. The claim appears to have been altogether unfounded. The words of the Charter are "the Province of Maine, the territory called Accada, or Nova Scotia, and all that tract of land lying between the said territories of Nova Scotia and the said Province of Maine." The only public document which at the date of the charter, had assigned any limits to Nova Scotia, was the grant to Sir William Alexander, which is bounded expressly on the west by the River St. Croix.

Since the year 1763, the British government had designated the River St. Croix and a line drawn due north from its source to the dividing highlands, as the western limit of Nova Scotia. That line was adopted in the treaty, and substituted in lieu of the River St. John proposed in the projet. The effect was, to leave to Great Britain a portion of territory along the sea shore, West and South of the River St. John, which was included, and to leave within the United States an inland portion of territory beyond the River St. John, which was not included within the original American claim.

The fact, therefore, principally relied on in the British Statement, is, that the River St. John having been decidedly rejected by Great Britain as a boundary, the line substituted must necessarily have been more contracted than that which had thus been rejected. And it is accordingly asserted, that the territory beyond the St. John, not included within the

original American pretensions, and which the United States now claim under the treaty, contains 700 square miles more than that portion of territory West of the River St. John, originally claimed by them, and which by the treaty, has fallen within the dominions of Great Britain.

In framing this argument, and in the assertion itself, every consideration belonging to the subject, seems to have been forgotten or neglected.

The framers of the treaty had not the benefit of the surveys and maps annexed to the proceedings of the Commissioners, from which the comparative contents of the two territories in question have been calculated in the manner mentioned in the British Statement: and they could have had no other data for such calculation than the maps existing at that time.

Supposing Mitchell's Map to have been that on which they relied, the most south-westerly source of the River St. John, which takes its rise in the dividing highlands, and that which gives the result most favorable to the British mode of calculating, is made, in that map, to terminate in a small lake, the western extremity of which is in about  $69^{\circ} 18'$  west longitude,  $46^{\circ} 38'$  north latitude, and about thirty-four miles south-east from Quebec. (d)

It will be easily verified, making the calculation according to Mitchell's Map, and taking that south-westerly source to have been the north-west angle of Nova Scotia contemplated in the first instructions of Congress, that the territory north of the St. John, not included within the original American claim, instead of containing seven hundred square miles more, is considerably less in extent than that portion lying west of the said river, which was claimed by the United States, according to those first instructions, and which by the treaty has fallen within the dominions of Great Britain. The British argument, being solely grounded on the contrary supposition, is therefore destitute of any foundation.

Yet this calculation is the most favorable to the British argument that could have been selected. It is utterly impossible that either the most southern, and then unknown, source of the River St. John, or even Mitchell's westernmost source of that river, could have been that which was contemplated in the American projet, as the north-west angle of Nova Scotia. It was there proposed that the River St. John, from its source to its mouth, should be the boundary between the United States and Nova Scotia, leaving within the United States all the territory on

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(d) This must have been the branch designated in Map A, as the west branch of the St. John, as they nearly agree both in latitude and in the distance and bearing from Quebec. The difference of nearly one degree in longitude arises from an error, which pervades the whole of Mitchell's Map.



the right bank, and giving to Nova Scotia the whole country on the left bank of the river, from its source to its mouth. It will appear at once, from an inspection of the map A, and of Mitchell's Map, that, from either of those sources to the place where the due north line intersects the St. John, the whole country on the south-east side of the river would have been thus within the boundaries of the United States, and that on the north-west side within those of Nova Scotia. Whatever breadth might be allotted to that Province in that quarter, it is evident that its north-west angle must have been at some place bearing north-west from the said point of intersection, and far north, therefore, of either of those sources; the westernmost being, on that supposition, the western, and the southernmost, nearly the south-west, instead of the north-west angle of Nova Scotia.

It must be further observed that, in the rejected article first proposed by the United States, the said States are declared to be bounded, *east*, by a line to be drawn along the middle of the St. John River from its source to its mouth in the Bay of Fundy. And it will be perceived by reference to Mitchell's Map, that the River St. John, from its westernmost source, as designated in that map, to the due north line, and even for some distance beyond it, would have been, according to the projet, the northern, instead of the eastern boundary of the United States. Whilst on the contrary, if the source of the St. John, designated in Mitchell's Map by the name of Nepissigouche was, as it is believed, the source intended by Congress and by the American negotiators, the River St. John from its source to its mouth, would have been with great propriety, described as the eastern boundary of the United States. The only argument against that otherwise most probable supposition, is that the branch of which the source is Mitchell's westernmost source, is in his map called the River St. John.

The spot on Mitchell's Map, called Nepissigouche, and his adjacent Lake Medusa (corrupted from Madawaska,) are proved to be the Temisconata Lake and Portage, from their connection with the corresponding Pistole and Wolves Rivers, which empty into the St. Lawrence.

The inference drawn in the British Statement will appear still more extraordinary, if the comparative value, at the date of the treaty, of the tracts of country in question, is taken in consideration. Even now, when, after the lapse of more than forty years, the inland country has with the great increase of population, and approximation of settlements, acquired a proportionate value and importance; its soil would, acre for acre, be considered as far less valuable than that of a territory, the greater part of which borders on the sea coast and tide water. But, in the year 1782, when the attention of both Powers had been and was so entirely turned to the country on the sea-shore, along

which alone there were any settlements at the time, is quite preposterous to suppose that believing the two tracts to be nearly equal in extent, their value could have been, in the opinion of either party, even a subject of comparison.

It is insisted that, independent of the comparative value of the two tracts of country, it cannot be supposed that, after having rejected the proposal to make the River St. John the boundary, and after having yielded her claim to the territory between the St. Croix and the Penobscot, Great Britain could have consented to give up the communication between her two provinces, Canada and Nova Scotia now New Brunswick.

It must be recollected, that the northern boundary, in that quarter of the United States, as described by the treaty of 1783, is precisely the same and described in the same words, as the southern boundary assigned, by the proclamation of 1763, to the government of Quebec, or Canada. And it follows, that the intentions must be found, not in the relative situation of the contracting Powers, in the year 1783, when the ancient line was confirmed, but in the object which the British Government must have had in view, in the year 1763, when the southern boundary of the Province of Quebec, such as it was confirmed by the treaty of 1783, such as it still continues to be to this day, was first established.

The sole object of the Proclamation of 1763, is, in that respect, what it professes to be, viz : to provide generally for the Government of the valuable acquisitions secured to Great Britain by the late treaty with France, and specially for that of Canada, by assigning proper boundaries to the Province of Quebec, which is erected with that view. Nothing more was necessary for that purpose than to include, within those limits, the French inhabitants known to have been, till the conquest of Canada, under its Government. It was sufficient, in order to effect that object, to include within the new Province the whole Country below Quebec, and nothing more than the country which is watered by the tributary streams of the River St. Lawrence, or what Geographers call the basin of that river. The Ridge, or by whatever other name called, in which those tributary streams have their sources, was not only a natural, but the most natural Boundary which presented itself. By deviating from its eastern extremity, so as to make the Bay des Chaleurs the Boundary in that quarter and thereby embrace the Gaspé settlements, all the French inhabitants were included. This was the only purpose that could then have been intended. The communication between Quebec and Nova Scotia, by the means of the River St. John, was wholly foreign to the determination of the Boundaries of the new Government, since, in the year 1763, when Massachusetts was part of the British Empire, it was quite immaterial to Great Britain, through which of her Provinces such communication should pass.

The separate and secret article, annexed to the provisional articles of November, 1782, supplies another and satisfactory answer to all the arguments derived from the pretended impossibility, that Great Britain ever could have acceded to the north-eastern boundary, as now claimed by the United States.

It will be remembered that it was provided by that article that, in case Great Britain, at the conclusion of the war, should recover or be put in possession of West Florida, the line of north boundary between this said province and the United States should be a line, drawn from the mouth of the river Yassous, where it unites with the Mississippi, due East to the River Apalachicola.

This article was extremely disadvantageous to America, since it would have removed her southern boundary, on a length of about 330 miles, near one hundred miles, further north, and yielded to Great Britain a territory containing more than twenty millions of acres. It must have proved particularly offensive to Spain : it was acceded to with great reluctance by the American Commissioners, and, contrary to their instructions, kept secret from the French Government. The principal reason which induced them to agree to it, is stated in their letter to their government of July, 1783, in which they say :

“Mr. Oswald was desirous to cover as much of the eastern shores of the Mississippi with British claims as possible, and for this purpose we were told a great deal about the ancient bounds of Canada and Louisiana, &c., &c., &c. The British court, which had probably not yet adopted the idea of relinquishing the Floridas, seemed desirous of annexing as much territory to them as possible, even up to the mouth of the Ohio. Mr. Oswald adhered strongly to that object, as well to render the British Countries there of sufficient extent to be (as he expressed it) worth keeping and protecting, as to afford a convenient retreat to the Tories, for whom it would be difficult otherwise to provide. And among other arguments, he finally urged his being willing to yield to our demand *to the east, north and west*, as a further reason for our gratifying him on the point in question.”

Another singular argument has been adduced, in order to sustain the claim of Great Britain to the whole disputed territory.

It is asserted in the first British Statement, that the main object of the treaty was to trace this part of the northern frontier of the United States, in such a manner as to throw certain rivers entirely into their territory ; that it was evidently determined, to divide from each other, at their sources, the several great rivers assigned to each power : that therefore those rivers were not to be intersected by the line of boundary in any part of their course : that throughout the discussions relating to the limits of the United States in that quarter, both parties clearly directed

their attention principally to rivers, and moreover, to rivers in their whole extent.

This, it is said, appears distinctly from the proceedings of the old Congress and from the negotiations of 1782. Nothing more appears, in that respect, from those proceedings and negotiations, than the rejected proposal, to make the River St. John the boundary. Not the slightest proof is adduced that the rejection implied a claim to the whole basin of the river. And the intentions of the parties cannot be shown by a gratuitous supposition.

In order to sustain the assertion, that it was the intention of the negotiators, that the Rivers in their whole extent should be assigned to each Power respectively, and therefore that they should not be intersected by any of the boundary lines, it is said in the British Statement, that the silence which the negotiators have kept with regard to the intersection of the River St. John is very difficult, if not impossible, to explain; that, if it had been intended, that the due north line should cross the River St. John, there can be no doubt that such a peculiarity would have been specifically adverted to.

When making that objection, it must have been forgotten, that both the direction and length of a straight line are determined by the two points at its two extremities; and that, in this instance, the point of departure, the direction of the line and the other line at which it terminates are all given, and determine the length of the due north line with such precision, as to render any further description superfluous. Although it was equally well known, that the boundary along the parallel of the 45th degree of north latitude would cross Lake Champlain, and that the southern boundary would also cross the Mobile, those peculiarities are not specifically adverted to.

An appeal is then made to the preamble of the Treaty, in the following words: The preamble to the Preliminary Articles of 1782, says, that the provisions of that Treaty are founded on the basis of "reciprocal advantages" and "mutual convenience"—on the principles of "liberal equity and reciprocity,"—with the express design of "excluding partial advantages, those seeds of discord;" and the introduction to the very article respecting boundaries declares, in equally express terms, that those boundaries are adjusted "with a view to prevent further disputes."

"Is it credible that, in the very face of these earnest declarations, the framers of the treaty should have adopted a Line of Boundary, which in the first place, while it did really secure to the United States, the whole of each river emptying within their territory, would deprive Great Britain of a full half of one, and a portion of another, of the largest rivers emptying within hers? and, on the other hand, would give to

Great Britain the lower half and entire command of the navigation of the largest river in the whole country, (the St. John) by which alone the whole timber and produce of the territory on the upper half of the same river could be conveyed to the sea, while that upper half was left to the United States?"

It is obvious from the tenor of the Article, that the disputes on the subject of boundaries, intended to be prevented, were those which might have arisen, not from their not being every where equally convenient to both parties, but from their uncertainty, had they been left subject to the doubtful interpretation of the indefinite term "territorial rights," instead of being specially and precisely described.

The proper answer, however, to every inference attempted to be drawn from such general expressions, used in a Preamble, or as introductory, is, that their true intent can only be found in the actual conditions of the treaty, instead of deducing the meaning of those conditions from conciliatory expressions of vague import, which are usual and proper in most treaties of peace.

The general assertion, respecting the intentions of the framers of the Treaty, is not only unsupported by proofs, but it is disproved by the decisive fact, that it was not adhered to, with respect to any other part of the Boundary.

From the Connecticut River to St. Regis, on the River St. Lawrence, the Boundary is a due west line, along the 45th parallel of North latitude which crosses Lake Champlain, and several other tributary streams of the River St. Lawrence, leaving within the United States, the upper branches and the sources, and within the dominions of Great Britain, the mouths and lower portion of those streams.

From St. Regis to the western extremity of Lake Superior, all the rivers from the south, which fall into the River St. Lawrence, or into the great lakes with which it communicates, are within the boundaries of the United States: Whilst all the rivers which, flowing from the south, fall into the River St. Lawrence below St. Regis, and all the rivers without exception, which flow from the north, either into the great lakes, or into that river, are, together with the mouth and sole outlet into the Sea of that immense body of waters, assigned to Great Britain.

All the inconveniences, with respect to navigation, or to a division, between the two Powers, of a country lying on the banks and waters of the same River, which are ascribed, by Great Britain, to the treaty boundary line, so far as it affects the River St. John, apply, with equal and greater force, to the River St. Lawrence, and to the extensive countries situated on its waters. And, on the principle she assumes, she might, with equal consistency, justice, and adherence to the terms of the treaty, claim all the territory, on the south of the River St. Law-

rence, and of its great reservoirs, which belongs to the United States, as she now does the upper half of the basin of the River St. John, which lies west of the line drawn due north from the source of the River St. Croix.

In the same manner the Southern boundary, from the banks of the Mississippi, extends to the source of the St. Mary's River, crossing, not far from their mouths, the great Rivers Mobile and Apalachicola, and numerous other considerable streams, leaving the mouths of all those rivers, together with a narrow slip along the sea coast, without the Boundaries of the United States; whilst the whole of the upper, or more than nine-tenths of the country watered by those rivers and their tributary streams, is, by the treaty, declared to be within their dominions.

The Rivers St. Croix, and St. Mary, from their mouths to their sources; the River Connecticut, from its source to the 45th degree of North latitude; the Mississippi, from the latitude of the Lake of the Woods to that of the 31st parallel; the water communication between Lake Superior and that of the Woods; that Lake; a due West line from its North-western extremity to the Mississippi, and finally the due North line from the source of the River St. Croix to the Highlands, complete the description of the boundaries prescribed by the treaty.

Not a single portion of the Boundary is described by the treaty, as dividing or separating from each other the rivers flowing in different directions; that alone excepted, which extends from the North-west angle of Nova Scotia to the North-westernmost head of Connecticut River. And the United States contend, that, through its whole extent between those two points, and in no other part of it, the Boundary line must divide or separate the rivers as described in the treaty.

When Great Britain insists, that the intention of the negotiators was to divide the rivers, so as to assign to each Power, respectively, the whole country situated on rivers, the mouths of which were in its territory; it is for the purpose of drawing the extraordinary inference, that the only portion of the Boundary which is expressly designated by the treaty as dividing, was not intended, to divide or separate the rivers that empty themselves into the River St. Lawrence, from those that fall into the Atlantic Ocean.

Let it be further observed, that, with respect to the waters of the River St. John, the British claim is now asserted in direct contradiction to the suggested intention. It was known to the framers of the treaty, as will appear by Mitchell's Map, that the due north line must necessarily cross the Western tributary streams of that river. The line does accordingly cross some of its waters, within two miles of the source of the St. Croix, and before it reaches Mars Hill, no less than three of those tributary streams, viz: Bull's Branch, the River Meduxnekeag, and the Presqu

isle River. The country on the West and along thirty eight miles of the due North line, watered by those three rivers, is acknowledged by Great Britain to be within the territories of the United States, although the mouth of that river is within her dominions.

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§ 6.

Former Boundaries.

The United States have, in reference only to the intentions of the negotiators, appealed to the coincidence of the boundaries of Massachusetts according to its colonial charter, with those determined by the treaty.

His Britannic Majesty, by the first article of the treaty, acknowledged the independence of the thirteen United States, designating each by its colonial name; (Massachusetts' Bay and not Massachusetts, Rhode Island and Providence Plantations instead of Rhode Island,) and relinquished all claims to the territorial rights of the same, and every part thereof." The principle, or basis, on which the Parties had agreed to treat, is clearly expressed: the intention was, that each state should retain the territory to which, as a colony, it had been entitled.

But it is provided in express terms by the second article, that in order "that all disputes which might arise in future on the subject of the boundaries of the said United States may be prevented, it is hereby agreed and declared, that the following are and shall be their boundaries, viz ;" and the description of the boundaries immediately follows. There can be no doubt that, though the basis or intention was indicated in the first article, the determination of the boundaries in the second article is conclusive and binding on both Parties. Whether those boundaries embraced more or less than had been contained within the chartered limits of Massachusetts' Bay, no appeal can be made from the terms of the second article to the general intention declared in the first, unless a doubt should arise respecting the true meaning of those terms.

The United States deny, that there can be any doubt in that respect; they rest their claim on the terms of the treaty; and they resort to the intentions clearly declared in the first article, only in reference to arguments attempted to be drawn from presumed probabilities and the supposed intentions of the negotiators.

The public acts, by virtue of which the Colony of Massachusetts' Bay claimed the disputed territory embraced, within the boundaries established by the treaty, have been stated at large in the introduction.

Nova Scotia and all that tract of land, lying between Nova Scotia

and the River Kennebec, which was the eastern boundary of the old Province of Maine, were annexed, by the charter of 1691, to the Colony of Massachusetts' Bay : reserving to the Crown the right of approving or rejecting grants of land by the Provincial government, of any lands lying or extending from the River of Sagadahock (Kennebec) to the Gulf of St. Lawrence and Canada Rivers, and to the main sea northward and eastward. (e)

All the French possessions before the war having been restored to France by the treaty of Ryswick of 1697, Nova Scotia, which was clearly embraced in the restitution, was severed from the British dominions ; and the clause of the charter, which annexed that territory to Massachusetts, was virtually repealed, and became a nullity. The understanding of the British Government of the extent of that restitution, will be found in the following sentence of a letter from the Lords of the Board of Trade, dated 30th of October, 1700, to the Earl of Bellamont, the Governor of Massachusetts, viz : "As to the boundaries, we have always insisted, and shall insist upon the English right, as far as the River St. Croix."

France, by the Treaty of Utrecht of 1713, ceded to Great Britain Nova Scotia or Acadia, with its ancient boundaries : but that province, instead of being again annexed to Massachusetts' Bay, was erected by Great Britain into a separate government, without any description of its limits till the year 1763. Subsequent to the treaty of Utrecht, the British Government, several times, called in question the title of Massachusetts to the territory between Nova Scotia and the River Kennebec. The law officers of the Crown, to whom the case had been referred, gave in the year 1731, a decided opinion in favor of Massachusetts, which appears to have been confirmed by an order in council. Yet, in the year 1763, when the limits of Nova Scotia were determined by an act of the Crown, the following words were added to the commission of the Governor, "although our said province has anciently extended and does of right extend as far as the River Pentagoet or Penobscot." This reservation was not inserted, since the year 1765, in the subsequent commissions of the Governors of that Province. In the same year, 1763, the Board of Trade, in a letter to Governor Bernard of Massachusetts, and in reference to a grant made to him by that Province, of an island lying east of the River Penobscot, again expressed a doubt, how far all future consideration of the right of Massachusetts was precluded by the order of Council, grounded upon the opinion of the attorney and solicitor-general in 1731. And when that grant was, in the year 1771, confirmed by the Crown, it was with the following proviso, viz : "Provided nevertheless, that his Majesty's approbation and confir-

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(e) By reference to the charter, it will be seen that the boundary of the Province towards the Sea is designated as "the Atlantic or western Sea or Ocean."



mation of the said Grant shall not have the effect to prejudice the right of the Crown, in and over the said territory of Sagadahock, both as to the dominion and the property of the soil."

Thus far, the general claim of Massachusetts to the territory between Kennebec and Nova Scotia, though called in question by the Crown, as far as the Kennebec, or at least the Penobscot, stood on unshaken, legal grounds, and could not have been disturbed, according to the *foremud* opinion of the Law Officers of the Crown, otherwise than by legal proceedings, which were never attempted. But doubts might have been suggested, before the year 1763, respecting the limits of the Province of Nova Scotia.

Before that year, the only public act emanating from the British Government, which designated the limits of Nova Scotia, was the Grant of 1621 to Sir William Alexander. The western boundary of the grant is, the River St. Croix, from its mouth in the Bay of Fundy, to its most remote western spring or source; from thence, a direct line running towards the north, to the nearest road, (*navium stationem*) river, or spring emptying itself into the great River de Canada; and from thence proceeding eastwardly along the sea shores of the said River de Canada, &c. It had not yet been ascertained which was the river intended by that called St. Croix; and the line to be drawn from the western source of that river to the River St. Lawrence, was expressed in vague terms.

It was suggested in the second British Statement, that the words of the Grant might lead to a line, drawn from the source of the St. Croix to the head waters of the River Chaudiere. The obvious answer to that construction of the terms of the Grant is, that such a line would have been towards the west, and not towards the north. But without insisting on that suggestion, it is asserted, that the line, drawn towards the north to the nearest part of the St. Lawrence, would strike that river, far to the west of that point where a due north line would intersect it. This is true; but the British Government had never maintained, declared, or suggested, that the line ought, according to the terms of the Grant, to be run in that direction. On the contrary, when, for the first time since the date of Sir William Alexander's Grant, the British Government defined the limits of Nova Scotia in the commissions of the Governors of that Province in the year 1763, the line was described, as running due north from the source of the River St. Croix, and without designating, from which of the sources of the river the line was to run. Even prior to that date, the line is represented as a due north line, in Mitchell's Map, which was undertaken with the approbation of the Board of Trade, and received its sanction, under the signature of John Pownall, its secretary.

Had it been otherwise, had the British Government maintained, prior

to the treaty of 1783, that the line in question ought, in conformity with the grant, to be a north-west line; and admitting that the Crown had the right to decide that question; the effect would have been to cut off from Massachusetts the north-eastern portion of the disputed territory. But the north-east angle of that Province would still have been on the banks of the River St. Lawrence.

Nothing of the kind had, however, been done or even suggested by the British Government. It further appears, by the letter from Jasper Mauduit, agent in England for Massachusetts' Bay, to the general court of that Province, dated 9th June, 1764, that, if the Province would cede to the Crown all pretence of right or title they might claim under their Charter to the lands on the River St. Lawrence, intended to form part of the Government of Quebec, the Crown was disposed to waive all further dispute concerning the lands as far as St. Croix, and from the Sea Coast of the Bay of Fundy, to the bounds of the Province of Quebec: reserving to itself only the right of approving grants of land, as before.

Under all these circumstances, and principally because the limits between Massachusetts on the one part, and Nova Scotia and Canada on the other part, had been actually fixed by the British Government in the year 1763, the United States contend that, when the negotiations were opened in 1782, the former Colony, now state of Massachusetts, had a strong, though still questioned title to the disputed territory, which is now claimed, as belonging of right to the said States under the terms of the treaty. That this claim of Massachusetts was discussed by the Negotiators, and was the subject of long debates, is a matter of record. And so tenacious and confident were the American Ministers of the right of Massachusetts, that they proposed to leave the question to be settled by Commissioners after the peace.

When, therefore, it is urged on the part of Great Britain, that it is incredible, that she should, after having rejected the proposal of making the River St. John, from its mouth to its source, the boundary between the two Powers, she should have yielded the upper basin of that river and the natural communication between Nova Scotia and Canada; that suggestion, founded as it is only on presumed probabilities, which have been discussed in the preceding section, is further rebutted by the great weight which the claim of Massachusetts must necessarily have had in determining the final agreement. This seems to be placed beyond a doubt by the fact, that the final adjustment was precisely that which had been suggested in Mr. Mauduit's communication; viz: the claim of Massachusetts to the narrow tract of land watered by the rivers which fall into the River St. Lawrence, was abandoned; and it was confirmed as far east as the River St. Croix, and from the Sea Coast to the highlands which form the southern boundary of the Province of Quebec.

The boundary, determined by the treaty of 1783, is in exact conformity with that claimed by Massachusetts under its charter, modified by those acts of the British Government of the year 1763, which had established the limits of Nova Scotia and of the Province of Quebec. And this identity leads to the enquiry of the understanding, which prevailed, between the years 1763 and 1783, respecting the true meaning of the acts of the British Government, in reference to the Southern boundary of the Province of Quebec.

The maps published since the treaty of 1783, may bear the marks of partiality, and have been modified in conformity with the pretensions of either party. No such bias could affect those that were published in Great Britain between the years 1763 and 1783. There was no motive that could influence Geographers to deviate from the true and obvious meaning of the acts of Great Britain which had established the Boundaries of her new and old Provinces. A solitary map, even though belonging to that epoch, contradicted, perhaps, by others, would be no authority. But if all the maps published in England, during that period, and in which the Boundaries of the Province of Quebec, as established by the acts of Great Britain are delineated, do agree in that respect, it will prove that the meaning of the acts, in reference to that Boundary, was so clear and obvious that they were universally understood in the same manner.

All the maps of that period, on which the southern Boundary of the Province of Quebec is laid down, and which, after a diligent search, both in England and America, have been obtained, accompany this statement. Some maps may have escaped notice; but not a single one has been omitted that has come within the knowledge of the American Government.

The maps thus collected are the following, viz :

- No. 1. T. Kitchen's British Dominions in North America, &c. engraved for Dodsley's Annual Register of 1763.
2. T. Kitchen's British Dominions in North America, &c. engraved for Captain John Knox's History of the War in America, and annexed to his Historical Journal of the Campaigns in North America, London, 1769.
3. British Empire in North America, &c. annexed to Wynn's History of the British Empire, &c. London, 1770.
4. J. Palairet's North America, with Improvements, &c. by Delarochette, London, 1765.
5. J. Ridge's British Dominions in North America, &c. annexed to a complete History of the late war, &c. Dublin, 1766.
6. North and South America, by the American Traveller, annexed to the "American Traveller," &c. London, 1769.

7. North America and West Indies, with the opposite Coasts, &c. London, 1775.—(Jeffery's Atlas.)
8. North America improved from D'Anville, with divisions by P. Bell, Engraved by R. W. Seale.—London, 1771.
9. P. Bell's British Dominions in North America, &c. 1772, annexed to "History of British Dominions in North America," &c. in fourteen books.—London, 1773.
10. S. Dunn's British Empire in North America.—London, 1774.—(Jeffery's Atlas.)
11. D'Anville's North America, improved with English Surveys, &c.—London, 1775.—(Jeffery's Atlas.)
12. E. Bowen and J. Gibson's North America, &c.—London, 1775—Two sheets, (Jeffery's Atlas.)
13. Sayer and Bennett's Province of Quebec, &c.—London, 1776.—(Jeffery's Atlas.)
14. Seat of War in the northern Colonies, &c.—London, 1776, annexed to the American Military Pocket Atlas.
15. North America, &c. corrected from the materials of Governor Pownall, M. P.—London, 1777.—(Jeffery's Atlas.)
16. Continent of America, &c. corrected from the materials of Governor Pownall.—London, 1777.
17. W. Faden's British Colonies in North America, 1777.
18. North America from the latest discoveries, 1778; engraved for "Carver's Travels."—London, 1778 and 1781.
47. T. Jeffrey's Nova Scotia, &c.—London, 1775.

The identity of the Highlands which form the southern boundary of the Province of Quebec, with those which are claimed by the United States as their boundary, will appear evident on the first inspection of those maps. It strengthens the proofs derived from them, that many differ from each other in several irrelevant particulars. (*f*)

The River Penobscot is laid down, in some, as the Western boundary of Nova Scotia; in others, where the river called St. Croix is made the boundary, the name is given to different rivers, to those now known as the Magaguadavic, the Scoodic, and the Cobscook. The course of the line drawn from the source of the St. Croix to the Highlands, is not the same in all, being generally due north, but, in some,

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(*f*) Most of the differences are found in the western boundary of Nova Scotia, and not in the southern boundary of the Province of Quebec. The reason is, that the proclamation of 1763 which prescribed this last boundary, had been published in a variety of ways and was known to all; whilst the Commissions of the Governor of Nova Scotia, which regulated the western boundary of that Province, were not published and remained unknown. Some of the map makers favoured in that respect the British claim, and others that of Massachusetts.

west of north ; and, in one instance, a crooked instead of a straight line.

That line, in most of the maps, crosses no other waters but those of the River St. John, and its tributary streams ; while, in others, it also crosses some upper branches of rivers that empty themselves into the Gulf of St. Lawrence. The boundary from that line eastward, in some of the maps, reaches the Bay des Chaleurs, by passing north of, and leaving on the right, the River Ristigouche : in others, it extends along the dividing ridge, to the source of that river, which is represented as a short stream, and then down the same to the Bay.

But, in every instance, the course of the line from the source of the River St. Croix is northward ; in every instance, that line crosses the River St. John and terminates at the Highlands in which the rivers that fall into the River St. Lawrence have their sources ; in every instance, the north-west angle of Nova Scotia is laid down on those Highlands, and where the north line terminates ; in every instance, the Highlands, from that point to the Connecticut River, divide the rivers that fall into the River St. Lawrence, from the tributary streams of the River St. John, and from the other rivers that fall into the Atlantic Ocean.

This universal understanding is easily accounted for. The description of the southern boundary of the Province of Quebec, in the Acts of the British Government, was in that respect, like that of the boundary of the United States by the treaty of 1783, expressed in terms so clear as to admit of no doubt, and to be susceptible of but one construction. What effect that universal understanding had on the framers of the treaty of 1783, will now be considered.

Mitchell's map is acknowledged, by both parties, to have regulated the joint and official proceedings of the framers of the treaty of 1783 : and the southern boundary of the Province of Quebec, designated for the first time by the Proclamation of 1763, was not, and could not be, laid down on that map, which was published in the year 1755.

This acknowledgment is founded on the testimony of the American Negotiators, taken at the time when the question "what" was the true River St. Croix, had, by virtue of the treaty of 1794, been submitted to a Joint Commission. The deposition of John Adams states, that "Mitchell's map was the only map or plan which was used by the Commissioners at their public conférences, though *other maps* were occasionally consulted by the American Commissioners, at their lodgings."

In a letter to Lieutenant Governor Cushing, of Massachusetts, of the 25th of October, 1784, when Mr. Adams's recollections on the subject were quite fresh, he writes : "*We had before us, through the whole negotiation, a variety of maps ; but it was Mitchell's map, upon which was marked out the whole of the Boundary Lines of the United States ;*

and the River St. Croix, which we fixed on, was upon that map the nearest river to St. John's ; so that, in all equity, good conscience, and honor, the river next to St. John's should be the boundary." (g)

One of the maps annexed to this statement, (No. 12,) that of Emanuel Bowen, published in 1775, is specially quoted in the Report of the Committee of Congress of the 16th of August, 1782, and was therefore in possession of the American Government.

The fact of other maps having been consulted by the American Ministers, is sufficient proof of their knowledge of what was universally understood by the Highlands prescribed as the southern boundary of the Province of Quebec. And it may be fairly inferred from the words, in the letter of Mr. Adams of October, 1784, "We had before us, through the whole negotiation, a variety of maps," &c. that those maps were before the Joint Negotiators. Yet it may be insisted that it is not in proof that the British Commissioners were acquainted with any other map than that of Mitchell.

On the supposition that the British Government selected, for the purpose of treating with the American Commissioners respecting boundaries, men who had never seen, and, on that occasion, did not examine any of the numerous maps of America published during the twenty next preceding years ; on the supposition that those Negotiators had no knowledge of such familiar collections as Jeffrey's American Atlas, or the American Military Pocket Atlas ; on the supposition that having, almost throughout the treaty, adopted the boundaries designated, and even the phraseology used in the Proclamation of 1763, they neglected to consult any of the maps in which the boundaries were laid down in conformity with that Proclamation ; ~~on~~ the supposition that the same unaccountable carelessness existed in the British Cabinet, to whom the case is proved to have been specially referred more than once ; on these suppositions, but on these alone, may it be pretended that the British Negotiators were ignorant of the universal understanding respecting the southern Boundary of the Province of Quebec, and unaware of its connection with the Boundary established by the treaty of 1783. Even on such supposition, it will hereafter be shown, that Mitchell's map is sufficient to establish what Highlands were intended by the Proclamation of 1763, and by the treaty of 1783.

The Provisional Articles of Peace between Great Britain and the

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(g) Though the remark may be superfluous, it may be observed that the fact of other maps having been consulted is mentioned by Mr. Adams for no particular purpose, and only in order to state the whole truth. The River St. Croix was at that time, the only subject of contention, and Mitchell's map was, in that respect, decisive in favor of the pretension of the United States, whilst several of the subsequent maps favored, as to that point, the British claim.

United States had been signed on the 30th November, 1782. The Boundaries then agreed on are, without any alteration, the same as those of the definitive treaty concluded on the 3d day of September, 1783.

During the interval that elapsed between the signing of the preliminaries and of the definitive treaty, four maps of the United States were published in London, one of which, at least, (Bew's,) appears to have been intended as illustrative of the Debates in Parliament on the subject of the Boundaries, viz :

- No. 19. Sayer and Bennet's United States of America with the British possessions, &c. London, 9th February, 1783.
- 20. Bew's North America, &c. (or Rebel Colonies, now United States,) engraved for the Political Magazine. London, 9th February, 1783.
- 21. J. Wallis' United States of America, &c. London, April, 1783.
- 22. J. Cary's United States of America, &c. London, July, 1783.

These maps are an evidence of the contemporaneous understanding of the Boundaries of the United States, according to the preliminaries. In all of them those Boundaries are laid down as now claimed by the United States, and are the same with those delineated in the preceding maps, as the Boundaries of the Provinces of Quebec and Nova Scotia. (*h*)

The only contradictory evidence adduced on the part of Great Britain, is intended to show, that the Province of Quebec had been understood, by some of its officers, subsequent to the Proclamation of 1763, to extend beyond the basin of the River St. Lawrence. It consists, 1st, of a private sale and some leases, recorded at Quebec, of a tract of land called the Fief of Madawaska, situated on one of the upper branches of the River St. John, which had formerly been granted by the French Government of Canada ; 2dly, of a notice, respecting encroachments on the hunting grounds of the Indians on the River St. John.

The Fief of Madawaska was granted in the year 1683 to a French subject, by the French Governor, and Intendant of New France and Acadia. The ancient date and French origin of the Grant are certainly irrelevant to any question at issue between Great Britain and the United States. Although the grant is made by the Governor of both Canada and Acadia, it is admitted, and is undoubtedly true, that the jurisdiction of the Governors of Canada, as such, extended over a con-

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(*h*) Seven other maps of the same character, published during the same and the ensuing year, afford additional proof of that understanding ; and evidence is not wanting that it continued to prevail in England for many subsequent years.

siderable portion, and since the Treaty of Utrecht, over the whole country watered by the River St. John. That the whole country was a perpetual subject of litigation between France and England, is well known. Neither of the two Powers, in its charters or grants of land, paid the slightest respect to the claims or rights of the other. Between Great Britain and the United States, and in reference to the colonial times, no other authority, as respects such charters or grants, can be appealed to, than the public documents which emanated from the British Government. Great Britain after the cession of Canada, had a perfect right to annex to any of her other colonies, any portion of the territory which had made part of that province, or had been possessed by France before the cession, and to restrain her new government of Quebec, within any limits she thought proper to assign to it; and this she actually did by the Proclamation of 1763.

It is obvious, that the fact of a grant of land of Canadian origin being found in any place, on the River St. John, does not prove that it ever lay, or does lie within the boundaries of the Province of Quebec, (now Lower Canada,) as prescribed by the Royal Proclamation of October 7th, 1763. And no other evidence has been produced, of a date subsequent to that proclamation, in any way relating to that Fief, than the fact, that various deeds of sale and leases of the property were recorded, either in what is called the Registers' office of Quebec, or in those of Public Notaries of the same City. Of the three deeds of sale, one is dated July, 1763, prior to the Royal Proclamation, and the two others, June and August, 1802, subsequent to the Treaty of 1783. Of the four leases, one is dated in 1786, and the three others are the only acts produced, dated subsequent to the proclamation of 1763 and previous to the Treaty of 1783. That such obscure transactions could have had any effect on the result of the negotiations for peace, or have even been known to the negotiators, will hardly be asserted. The recording of those instruments at Quebec only shows, if it shows any thing, that the lessees and grantees, all of them inhabitants of Canada, were not competent judges of what were the limits of the province. For the first deed, which was from the last French owner to General Murray, who was a competent judge, bears date, July, 1763, before the limits of the province had been prescribed by the British Government.

But there was a sufficient reason, why those several instruments should have been thus recorded. Every one, whether lease or deed of sale, included not only the Fief of Madawaska, but also, other much more valuable lands, situated within the acknowledged boundaries of the British Province of Quebec.

The original deed to General Murray includes, 1st. the fief of Mada-



possess the topographical details necessary for such extreme precision. The Boundary was, therefore, of necessity, to be defined in general terms."

It becomes therefore highly important to demonstrate, as it may be done conclusively, that the framers of the treaty had a knowledge of the topography of the country amply sufficient, with respect to the north-eastern boundary, to enable them, whatever their intentions might be, to describe it with great correctness in reference to the rivers.

It is observed in the British Statement, "that if little was ascertained concerning the sources and directions of rivers, which generally afford the earliest means of communication, and the most convenient places for settlement in newly occupied countries, how very much less was probably known of a hilly or mountainous tract, situated at a distance from the Sea, overgrown with forests, and intermingled with extensive morasses." This passage is quoted, on account of its admitting, as the United States maintain, that nothing was known of the nature of the ground over which the boundary might pass, and as acknowledging, that something at least was known concerning the sources and courses of the rivers. The following passage is more in point :

"Some knowledge, however, though in many respects limited and inaccurate, must surely have existed of a region not wholly destitute of settlers, which had been traversed not long before by a body of Troops, and previously investigated by an Officer in the public employment, and of which several maps exhibiting the supposed courses of the principal rivers and the general outline of the coast and bays had been published. That knowledge, whatever may have been its degree, must surely have reached the Negotiators of the Treaty ; and there can be little doubt that, in describing the Boundaries of the United States, they were more or less guided by its influence."

Although the numerous maps published between the years 1763 and 1783, adduced on the part of the United States, have been objected to, as far as related to the southern boundary of Canada therein delineated, it could not be denied that they were a proper evidence of the knowledge then generally had of the topography of the Country. It would be preposterous to suppose, that the Negotiators of the Treaty had not the same general geographical information which every one who looks at maps does possess ; or that their attention was not called to that which was a principal subject of discussion in the course of the negotiations. Nor can it be denied, that maps have been considered among the best evidences of the general geographical knowledge at the time when such maps were published.

All the maps published between 1755 and 1783 agree with that of Mitchell's, as regards the interior portion of the country, and specially

the course and length of the River St. John. That entire coincidence, respecting those general features, which, as will be seen, were sufficient to enable the Negotiators of the treaty to define in the most precise manner the portion of the boundary in question, proves that those features were an universally known and admitted Geographical fact. That knowledge was till 1783, and for several years afterwards, almost exclusively derived from the explorations of the French when they were in possession of the country.

The French map which is the type of all those which followed is, that of the Eastern part of New France or Canada published, in 1744, by the Engineer Bellin, and annexed to the History of New France by Charlevoix, published the same year. The following observation appears on the face of the map; "This map is very different from any that has as yet appeared. I owe that knowledge to the several manuscript maps, plans and journals in the Depot of the Marine, and to the memoirs communicated to me by the Jesuit Missionaries."

Mitchell's map is, for the portion of the country now in question, almost a transcript of that of Bellin. Great Britain cannot reject its authority, which is proved by the evidence of the framers of the Treaty, and which is acknowledged by the Convention of 1827, to have regulated the joint and official proceedings of the Negotiators. When the assertions, of the imperfect topographical knowledge then had of the interior of the country and of the consequent absolute impossibility for the framers of the Treaty of 1783 to describe the boundary with sufficient accuracy, are recollected; the vast advantage will immediately be perceived of having at least one map, mutually acknowledged to be conclusive evidence of the topography of the country, as it was understood by them, and by which, comparing it with the terms of that instrument, the true intentions of those ministers may be ascertained; and to this map alone, independent of any subsequently published, and even setting aside every other evidence that may elucidate the subject, the United States will now appeal, as the proper test of those intentions.

The great River St. John, which is the principal feature of the interior and disputed territory, is laid down by Mitchell with considerable accuracy, both as to course and distance, from the place where it is intersected by the due north line to its sources. It will at once be seen, that the boundaries respectively claimed by the two parties, which have for that purpose been now traced on his map, do not materially differ from those delineated on map A.

It will there be seen, that it was perfectly well known to the negotiators:

That the River St. John penetrated 120 miles west of the due north line; that the whole upper basin of that river did intervene between

the sources of the Penobscot and Kennebec, and those of the rivers which fall into the River St. Lawrence :

That, from the source of the River St. Croix to the sources of the tributary streams of the St. Lawrence, there was not on the due north line, which is distinctly marked on the original map, a single point which divided any other rivers whatever from each other, than streams falling into one and the same river, viz : the St. John :

That the said due north line did, between the source of the St. Croix and that of the tributary streams of the St. Lawrence met by that line, intersect the main River St. John :

That any line, drawn along the dividing highlands, from any point on the due north line south of the River St. John, towards the sources of the Kennebec and of the Chaudiere, must through its whole extent, or near 120 miles, according to the map, divide no other rivers from each other than the sources of the tributary streams of the St. John from those of the several branches of the Penobscot and of the Kennebec :

That any line drawn towards the sources of the Chaudiere from any point on the due north line, north of the River St. John and south of the highland which divides the northerly source of that river from the waters of the St. Lawrence, would divide no rivers whatever from each other, but would intersect the several branches of the St. John :

And that a line drawn along dividing highlands, from the highland which on that map divides, the sources of the tributary streams of the St. Lawrence from those of the St. John, to the highland which divides the sources of the Kennebec from those of the Chaudiere, must through the whole distance, or 150 miles in a straight line according to the map, necessarily divide the sources of the tributary streams of the St. Lawrence from the sources of the several branches of the St. John, and from no other rivers whatever.

With all those data before them, which may be verified by an inspection of Mitchell's map, it is impossible to deny that the negotiators of the Treaty of 1783 had all the knowledge necessary to describe the boundary with sufficient accuracy.

The mistakes of longitude in Mitchell's map do not affect the question, since the relative position of the principal points was all that was necessary for a correct description of the boundary. The length, in a straight line, of Mitchell's St. Croix from its mouth to its source is a few miles greater than in map A. The length, of the due north line from the source of the St. Croix to that of a river emptying into the St. Lawrence is about twenty miles shorter in Mitchell's than in map A ; The westernmost source of the St. John is in both maps placed north of west from the source of the St. Croix, and the distance between those two points is twenty miles shorter in Mitchell's than in map A ; Mitch-

ell's Lake Medusa, which is the Lake Temisquata of map A, is placed 50 miles east of its true position. It is clear that neither of those differences could affect the general result or prevent an accurate description of the intended boundary. (i)

With those facts before them, if the negotiators of the treaty had intended that the north-west angle of Nova Scotia should be placed on highlands situated south of the River St. John, or on any point of the due north line lying between and dividing only tributary streams of the River St. John, it is impossible that they should have described that angle as being on highlands dividing the waters of the River St. Lawrence from rivers falling into the Atlantic Ocean.

It is equally impossible, that if the Negotiators intended that the boundary, from the due north line to the sources of the Chandiere, should for one hundred and twenty miles, either divide the sources of the Penobscot and of the Kennebec from those of the St. John, or should, without dividing any rivers, only intersect branches of the St. John, they should have described such a boundary, as being on Highlands dividing the waters of the River St. Lawrence from the rivers falling into the Atlantic Ocean.

Yet it is asserted by Great Britain, that it was the intention of the parties to the treaty of 1783, that the point designated in it, as the north-west angle of Nova Scotia; that is to say, the point at which the line drawn due north from the source of the River St. Croix meets the intended Highlands and terminates, should be found to the south of the River St. John.

And it was manifest by Mitchell's Map, and therefore perfectly well known to the Negotiators, that no point or part of the due north line aforesaid, south of the River St. John, did or could divide, from each other, any rivers whatever, but some branches of the said River St. John.

It is, therefore, contended, on the part of Great Britain, that, intending to designate, as the north-west angle of Nova Scotia, and as the termination of the due north line which forms the Eastern boundary of the United States, some point known to them to divide, from each other, no other rivers than some branches of a river, which falls neither into the River St. Lawrence, nor (according to the hypothesis,) into the Atlantic Ocean; the framers of the treaty did deliberately describe that Eastern boundary, as a line drawn from the source of the River St. Croix, "directly north, to the aforesaid *Highlands* which divide the rivers that fall into the Atlantic Ocean from those which fall into the River St. Lawrence;" thus defining the termination of that line, or

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(i) The fact, that the north-west angle of Nova Scotia has been found to be on a highland which divides the waters of the River St. Lawrence from those of the Ristigouche, will be hereafter adverted to.

north-west angle of Nova Scotia, by a designation known to them not to apply to the point which they intended to define.

It is again asserted by Great Britain, that the Highlands which actually divide the rivers specified by the treaty, and which alone were contemplated as such by the Negotiators, are only those which, from the north-westernmost source of the Penobscot, to the north-westernmost source of the Connecticut River, divide the Rivers Penobscot, Kennebec, and Androscoggin, from the Rivers Chaudiere and St. Francis, which empty themselves into the St. Lawrence; and that the boundary line, intended and described by the treaty, does, from the above-mentioned point south of the River St. John, on the due north line, extend south of the said river, along the heads of the River Penobscot, to its north-westernmost source, as it is delineated on the Map A.

But it was manifest by Mitchell's Map, and therefore perfectly well known to the Negotiators, that the nearest source of the River Chaudiere, was about one hundred and twenty miles distant, in a straight line, and in a nearly westerly course, from any point of the due north line; that, through that whole extent, the line would not divide; from any other river whatever, any river that empties itself into the River St. Lawrence; and that it could not, through that whole extent, divide any other rivers from each other, but the Penobscot and the Kennebec from the tributary streams of the River St. John; that is to say, rivers falling into the Atlantic Ocean, from a river falling (according to the hypothesis,) into the Bay of Fundy.

It is, therefore, contended on the part of Great Britain, that, intending to designate as the boundary line, from the north-west angle of Nova Scotia to the north-westernmost head of Connecticut River, a line which, passing south of the River St. John, was known to them to divide, for three-fifths of its extent, no other rivers from each other, than rivers falling into the Atlantic Ocean, from a river falling into the Bay of Fundy; and knowing that the said boundary line would not, at a shorter distance than one hundred and twenty miles from its commencement, reach the Highlands which actually divide the rivers that fall into the Atlantic Ocean from those which empty themselves into the River St. Lawrence; the framers of the treaty, intending also, as expressly stated, that their description of the boundaries should be such as that all disputes which might arise in future on the subject of the same, might be prevented; did deliberately, and after much contention on the subject, ultimately agree to define the boundary thus intended to be established, in the following words, viz:

“From the north-west angle of Nova Scotia, viz: that angle which is formed by a line drawn due north from the source of St. Croix River to the Highlands, along the said Highlands which divide those rivers

that empty themselves into the River St. Lawrence, from those which fall into the Atlantic Ocean, to the north-westernmost head of Connecticut River."

That is to say, that, in defining the boundary in question, those ministers described a line which, to their knowledge, divided, for three-fifths of its extent, rivers falling into the Atlantic Ocean from *a river falling into the Bay of Fundy*, as a line dividing rivers falling into the Atlantic Ocean from *rivers emptying themselves into the River St. Lawrence*; thus adopting a description which, to their knowledge, was applicable only to eighty miles, out of the two hundred, along which the said boundary does, and was known by them to extend; and which, to their knowledge, was entirely inapplicable to the one hundred and twenty miles next to the place of beginning, or to three-fifths of the whole length of that boundary.

This incredible misapplication of language, or indeed gross absurdity, is ascribed to eminent and practical statesmen, some of them not less remarkable for the precision and perspicuity of their style, than for the clearness of their conceptions; and in a case where the description, being corrected in relation to the River Connecticut, affords an incontestable proof of the strict attention they paid to the terms used in describing that part of the boundary.

What renders the supposition, that those ministers expressed themselves in terms so contradictory of the intentions gratuitously ascribed to them, still more untenable, is, that there would not have been the slightest difficulty, with Mitchell's Map before them, in defining with the utmost precision, if so intended, the boundary line as now contended for by Great Britain.

Had the intention been, as is affirmed, to assign to Great Britain the whole of the basin of the River St. John, there would not have been any occasion, either to refer to the north-west angle of Nova Scotia, or that any part of the boundary should have been a line drawn due north from the source of the River St. Croix. In that case, the boundary would, by any ordinary conveyancer in possession of Mitchell's Map, and of the intentions of the parties, have been described in the following words, or in other as explicit, and of the same import, viz:

From the source of the River St. Croix, along the Highlands which divide the rivers that empty themselves either into the River St. John, or into the River St. Lawrence, from those which fall into the Atlantic Ocean, west of the mouth of the River St. Croix, to the north-westernmost head of Connecticut River. . . . . East by a line to be drawn along the middle of the River St. Croix, from its mouth in the Bay of Fundy to its source.

Had it been intended, though for what object, with the intentions

ascribed to the Negotiators, is altogether unintelligible, that a due north line drawn from the source of the River St. Croix, should form a part of the boundary, a slight alteration in the phraseology would, with equal facility, have effected that purpose.

These conclusive observations, as well as the other arguments adduced on the part of the United States, in opposition to the line heretofore contended for on the part of Great Britain, are equally applicable to any other boundary that may be suggested, other than that claimed by them.

Since the north-west angle of Nova Scotia, and the boundary extending thence westwardly are both expressly described in the treaty, as being on and along the highlands which divide the rivers that empty themselves into the river St. Lawrence, from those which fall into the Atlantic Ocean: it is impossible that the negotiators should have intended to designate as that angle and as that boundary, any other point and any other boundary, than the only point and the only boundary which, on Mitchell's Map, divide the waters of the River St. Lawrence from any other rivers whatever.

And since the only rivers which on Mitchell's Map are divided or separated on the due north line, and thence westwardly and south-westwardly for more than one hundred and fifty miles from rivers falling into the Atlantic Ocean, are the tributary streams of the St. John, it necessarily follows, that the negotiators must have considered that river as falling into the Atlantic Ocean.

With Mitchell's Map before his eyes, no person can doubt, that, if the framers of the treaty considered that river as not falling into the Atlantic Ocean, they did designate both the north-west angle and boundary aforesaid, by terms known to them not to apply to the angle and boundary which they intended to designate.

And with the said map before him, every one will be satisfied, that if they did consider the St. John as one of the rivers falling into the Atlantic Ocean, the negotiators could not have described the north-west angle of Nova Scotia and the boundary between the two Powers, in a more precise manner than in the terms of the treaty. It is for that reason that, unable otherwise to adapt the terms of the treaty to any other boundary than that claimed by the United States, the authors of the British Statements have been compelled to ascribe to the framers of the treaty a gross ignorance of those general features of the country, which were at the time universally known to all those who had the most superficial knowledge of geography. The whole argument adduced on the part of Great Britain, in order to explain the supposed ambiguity of the terms of the treaty, is condensed in the following passage from the second statement.

"What reasons may have prevailed with the negotiators, on the supposition that they intended to designate highlands to the south of the St. John, as those which the due north line was to meet, not to declare that specific intention by an additional clause of the treaty, can now be only matter of conjecture. But strong probabilities are not wanting to aid the discovery of the truth even in this particular also."

"In the first place, by retaining in the clause respecting rivers and highlands the term 'Atlantic Ocean,' in connection with the limited sense unequivocally attached to it in another part of the same Article, the British Plenipotentiary might have reasonably hoped to preclude any future disagreement on the subject. In the second place, the insertion of a definition of a north-west angle of Nova Scotia, calculated to obviate any embarrassment which might spring out of the use of that term, as a known and settled point of departure with reference to the Colonial Boundaries, may also have contributed to satisfy him as to the efficacy of the wording, as it now stands in the Treaty."

"It may surely be assumed that the negotiators meant to define the boundary in a spirit accordant with the just and liberal views declared in the preamble of the treaty. If it had been possible to describe the whole Boundary Line with minute exactness, their desire to prevent future disputes, would doubtless have led them to do so. But they evidently did not possess the topographical details necessary for such extreme precision. The boundary was, therefore, of necessity, to be defined in general terms."

"A glance on Mitchell's Map was sufficient to show them, that a due north line could not be drawn from the source of the St. Croix to the supposed latitude of the head waters of the Atlantic rivers, flowing westward of that river, without a probability of its striking some of the smaller and very inconsiderable lakes or water courses falling into the St. John. To have changed the grand features of their agreement, on account of this petty consideration, would have been unwise; and, at the same time, there was an obvious and disproportionate inconvenience in guarding, in express terms, against a mere contingency of no practical importance."

"Again, they must have known that a considerable part of the boundary line would be traced along the highlands situated nearest to the head waters of the Connecticut, and immediately dividing the Kennebec from the Chandiere. All parties agree that the words of the treaty apply without shadow or possibility of doubt, to that portion at least of the highland boundary. The highlands, which were *known* to range along the sources of the more eastern Atlantic rivers, were *believed* to be a *continuation* of the others."

"In order to frame a definition more nicely and literally adapted to



the varying circumstances of the line as thus prolonged, it would have been necessary to obtain an exact knowledge of that part of it where the change of circumstances was to operate ; and this degree of precision, as already observed, was necessarily unattainable from the moment that the source of the St. John had ceased to be in view as the proposed north-west angle of Nova Scotia. The due north line was intended to strike highlands to the south of the River St. John. At the point of intersection, the boundary was to be carried west in such manner as to place all the rivers flowing on that side of the St. Croix, and consequently Atlantic rivers, within the territory of the United States. Towards the other extremity, there was that large portion of the Highland Line, respecting which both parties are agreed. Upon these data, it is by no means extraordinary that the negotiators should have fallen into the error (for such the pending difference authorizes us to call it) of supposing that they had sufficiently provided, by the present wording of the treaty, for the due direction of that part of the line which was intended to unite the point of departure on the north line, with the north-westernmost head of Connecticut River, by joining on to that other part of the same line which immediately separates the sources of the Kennebec from those of the Chandiere."

"These probabilities, which are not put forward as known undoubted truths, being nevertheless, such evidences as the nature of the case admits, must have their weight in removing the objection to which they immediately relate, and must contribute, in that respect, to confirm and fully establish the position previously maintained on such just grounds, and by so many cogent and convincing reasons ; namely, that the Highlands of the Treaty were meant to be fixed to the South of the St. John."

What were those other just grounds and cogent reasons has already been stated. It is not necessary to advert to the mode of reasoning by which, from the assumption, that the due north Line was intended to strike Highlands to the south of the River St. John, the same conclusion is deduced ; nor to the repeated suggestion, that a continuation of Highlands dividing the rivers contemplated by the Treaty, which continuation does not divide those rivers, is to be taken as part of the chain of Highlands which actually divides those rivers. But the reasons assigned, why the Negotiators did not declare the specific intention ascribed to them by Great Britain, by an additional clause of the Treaty, or by an alteration of its terms are : first, that the term Atlantic Ocean, retained in the clause respecting Rivers and Highlands, in connection with the limited sense unequivocally attached to it in another part of the same Article, might have reasonably been deemed sufficient to preclude any future disagreement on the subject ; secondly, the insertion of a defini-

tion of the north-west angle of Nova Scotia; thirdly, the want of sufficient topographical knowledge.

The last supposition has now been put at rest; and it has been demonstrated, that the definition of the north-west angle of Nova Scotia in the Treaty proves the reverse of the position assumed on the part of Great Britain. In order to explain, why the Negotiators, on the supposition that they intended to designate Highlands to the south of the St. John, did not specify that intention by the terms of the Treaty, nothing remains but the retention of the term Atlantic Ocean as above stated. (j) And it is asserted in the British Statement, that though the treaty names but two classes of rivers, a third class was contemplated, viz: rivers which fell neither in the Atlantic Ocean, nor into the River St. Lawrence.

It cannot be denied, and is evident from Mitchell's Map, that the Negotiators knew, that any line whatever, drawn from any point whatever on the due north line towards the sources of the Chandiere and of the Penobscot or Kennebec, necessarily must, through the whole distance or two thirds of the whole boundary between the due north line and the sources of the Connecticut, either intersect all the branches of the St. John, or extend along the ground dividing the sources of those branches from those of the tributary streams of the St. Lawrence or of the Penobscot. They knew that any such line must necessarily run through, or along the limits of the whole intervening upper basin of that River, which river, as is asserted, they did consider as not falling into the Atlantic Ocean. And it is seriously suggested that, in order to give effect to that intention, they resorted to the mode of defining that identical line, as being on the highlands which divide the rivers that empty themselves into the River St. Lawrence from those which fall into the Atlantic Ocean.

It is asserted, that the Negotiators knowing, that all the maps on which the southern boundary of Canada was delineated, placed it on the ground which divides the waters of the River St. Lawrence from those of the River St. John, and that such had been and was the general understand-

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(j) The retention, from the rejected Article which made the St. John the boundary of the term "Atlantic Ocean," or the substitution in the treaty of that term in lieu of the word "Sea" used in the proclamation of 1763. The difference between the treaty and the Proclamation does not consist in the word "Sea" having, in reference to the American shores, a more extensive meaning than "Atlantic Ocean;" but in that, the "Sea" is not contradistinguished from any of its inlets in any clause of the Proclamation, which is not therefore liable to the groundless objection raised, on account of such contradistinction in another clause of the Treaty, of the Atlantic Ocean with one of its inlets. But since the boundary of the Treaty is the same with that of the Proclamation, the St. John, which was an Atlantic river according to the Proclamation, is an Atlantic River according to the treaty.

ing ; knowing also that, according to Mitchell's map, the terms of the Treaty could not, whatever was the meaning attached to the term Atlantic Ocean, apply to any other boundary than that which thus divides the said waters ; perfectly aware therefore that, unless the St. John was deemed to be a river falling into the Atlantic Ocean, the north-west angle of Nova Scotia and the boundary prescribed by the terms of the Treaty had no existence ; and satisfied, as they must have been, that the terms of the Treaty could not be understood by the American Negotiators, otherwise than as confirming the said southern boundary of Canada on the Highlands which divide the waters of the River St. Lawrence from those of the St. John ; the British Negotiators intended nevertheless, by retaining in that clause the term Atlantic Ocean, and combining it with the restricted meaning of the same term in another clause, to place the boundary in direct contradiction of the terms of the Treaty, or, if that was impossible, to give a designation of the boundary which, as they knew, could not be carried into effect.

This, though certainly not intended, might be construed as a grave imputation on the British Cabinet and negotiators, which the elevated character of the distinguished statesman, who presided at that moment over the British councils, would alone be sufficient to repel. But the fact is that the negotiations were carried on, on both sides with perfect sincerity and good faith, and even with feelings much more friendly than might at that moment have been expected. Those feelings were manifested throughout the whole negotiation, and particularly, by the desire evinced to insert in the Treaty a liberal commercial arrangement, and by the separate article concealed, contrary to their instructions, by the American Ministers from the French Government.

The presumed ambiguity of the terms of the Treaty is the consequence of the untenable construction which is now attempted to be put upon it. As applied to that construction, the terms are not merely of doubtful import ; the pretended construction is in direct opposition to them. As applied to the boundary claimed by the United States, they are equally clear and precise. They were thus understood by both parties at the time when the Treaty was concluded. And if any doubt remains on that point, an appeal is fearlessly made to the Archives of the British State Office.

The Government of the United States is in the habit of publishing every thing. In the course of the discussions on this subject Great Britain has made use, as she had a right to do, of those publications. In a direct negotiation between the two Countries, the United States cannot require a reciprocity of communications in that respect. But, if they voluntarily agree to a second reference, they have a right to ask, that they should be placed before the Arbitrator on an equal footing with

the other party ; and that both should be under the obligation of laying before him all the instructions given by each to the negotiators of the Treaty, as well as the correspondence which took place between each Government and its plenipotentiaries. From the relative distances and the frequency of communications, the correspondence between the British Government and its Ministers at Paris, must have been much more full and better calculated to show the intentions of the parties, than can be deduced from the few letters, which exist and have been published from the American Ministers to their Government.

By the Convention of 1827, the contracting parties were bound to give copies only of acts of a public nature ; and this was construed so strictly, that the British Government declined to give copies of the opinion given in 1731, by the Officers of the Crown, concerning the charter of Massachusetts and of the order in Council relative thereto mentioned in the letter of the Board of Trade to Governor Bernard. (*k*)

There is one point on which the negotiators may have been led into error by Mitchell's map. The due north line drawn upon it does not intersect any of the tributary streams of the Ristigouche. It may be said that if it had been anticipated, that some of those streams would be intersected by the north line, the framers of the Treaty would have designated the highlands, which the due north line was to meet as dividing the waters of the River and Gulf of St. Lawrence from those of the Atlantic Rivers. This is not improbable, as the boundary would have been more natural. But this is mere conjecture ; and, whatever may have been the intentions of the negotiators, the distinction between the River and the Gulf is so clearly designated by nature and by official acts, that the terms of the Treaty do not seem to allow that construction. Should it be thought otherwise, the territory which embraces the head waters of the Ristigouche is in itself of little value, would facilitate the communication between New Brunswick and Canada, and might be yielded by the United States without a dereliction of principle. (*l*)

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(*k*) An authentic copy of the opinion of the Law Officers of the Crown was found in the Archives of Massachusetts, but the order in council was not obtained.

(*l*) It may be observed that the River St. Lawrence is itself, in fact, an Atlantic River, and has been considered as such by all geographers (Malte Brun, Bouchette, &c.) The signification of the term Atlantic Ocean is restrained in the clause which refers to the division of rivers as well, but not in the same manner, as in the clause to which the Agents of the British Government have appealed. In the first clause, the Highlands must divide the rivers that empty themselves into the River St. Lawrence from all the other Atlantic Rivers. In the other clause, Bay of Fundy is distinguished from the main Ocean, or from the whole Atlantic Ocean, the Bay of Fundy only excepted.

## § 8.

## Recapitulation.

The summit of the north-east angle of the United States and that of the north-west angle of Nova Scotia are identic ; and the summit of the said north-west angle is, by the express terms of the treaty, actually placed on Highlands which divide those rivers that empty themselves into the River St. Lawrence from those which fall into the Atlantic Ocean. For the word *said*, which refers to the "Highlands" that form the said north-west angle, identifies them with the Highlands which form the boundary and divide the rivers as aforesaid : and, moreover, the eastern boundary, which terminates at the summit of the said north-west angle, is described, in a subsequent clause, as a line to be drawn from the source of the River St. Croix, directly north to the *aforesaid* Highlands which divide the rivers as aforesaid.

The boundary between the two powers is described in the treaty, as being *from* the summit of the said north-west angle of Nova Scotia, *along* the Highlands which divide the rivers as above described, *to* the north-westernmost source of Connecticut River. No words in the language could have been selected more appropriate and precise than *from*, *along* and *to*, in order to describe a boundary intended to be from its beginning to its termination, without any chasm or interruption, along Highlands actually dividing the rivers that empty themselves into the River St. Lawrence from those which fall into the Atlantic Ocean. And the deliberate attention, bestowed on that subject by the Negotiators, is demonstrated by the care they took in correcting an error which left a chasm, between the 45th degree of latitude and the source of the Connecticut, in the description of the southern boundary of the Province of Quebec, or Canada, as designated in the previous acts of the British Government, viz : the Royal Proclamation of 1763, and the Quebec Act of 1774.

It is asserted, on the part of Great Britain, that the north-west angle of Nova Scotia is to be found, at a point on the said due north line, near Mars Hill, about forty miles north from the source of the St. Croix, or, according to Messrs. Featherstonhaugh and Mudge, at a point about twelve miles further north, near and south of Restook River : neither of which points is on Highlands dividing the waters of the St. Lawrence from those of Atlantic rivers, or nearer such Highlands than from ninety to one hundred miles ; and both of which divide only tributary streams of one and the same river, viz : the River St. John ; which river does not fall into the River St. Lawrence, nor, according to the construction put on the treaty, on the part of Great Britain, into the Atlantic Ocean.

It is, in like manner, asserted, that the boundary between the two Powers, from either of those two points to a Highland which divides the sources of the Penobscot from those of the River Chaudiere, a tributary stream of the St. Lawrence and about one hundred and twenty miles distant, extends along Highlands which do not divide any rivers emptying into the St. Lawrence from any rivers whatever, but which divide and can divide no other rivers whatever, than tributary streams of the said River St. John from tributary streams of the same river and of the Penobscot.

Both assertions are not an interpretation, but a direct and obvious violation of the express terms of the treaty. The attempt to obviate this, by calling the Highlands claimed on the part of Great Britain, *a continuation* of, or, *connexion with* the Highlands, one hundred and twenty miles distant, acknowledged by both parties to be the Highlands contemplated by the treaty, is tantamount to an interpolation in the treaty of one of those expressions.

The term, "Highlands which divide, &c.," applied to a boundary between the dominions of two Powers, implies that the territories thus to be divided are contiguous. "The verb, *to divide*, requires the contiguity of the objects to be divided." A boundary, one hundred miles distant from the waters of the St. Lawrence, does not divide those waters from any other rivers whatever. The Highlands claimed as a boundary, on the part of Great Britain, do divide the waters of the Penobscot from those of the St. John's, and not from those of the St. Lawrence. The whole upper basin of the St. John's intervenes between the Highlands claimed on the part of Great Britain and the sources of the St. Lawrence.

This fact was perfectly well known to the Negotiators of the treaty, as appears by Mitchell's Map, acknowledged to have been that which governed their joint and official proceedings. To say, therefore, that the north-west angle of Nova Scotia and the boundary, claimed on the part of Great Britain, were those which they intended to designate, is to suppose, that they knowingly and deliberately did define that angle and that boundary, by designations known to them not to apply to the angle and boundary which they intended to define.

It has been demonstrated that the framers of the treaty were possessed of all the information necessary to enable them to define with precision the position of any north-west angle of Nova Scotia and of any boundary between the two Powers which they might have intended to establish; and also that, had they intended to adopt those claimed on the part of Great Britain, this, with the data in their possession, might have been effected in express terms, without the slightest difficulty.

All the preceding observations apply with equal force to any other point and to any other line whatever, which might be claimed, on the part

of Great Britain, as the north-west angle of Nova Scotia and the boundary between the two powers, other than the angle and the boundary claimed by the United States. No point on the due north line, other than that thus claimed, or that which divides the waters of the St. John's from those of the Ristigouche, divides any rivers from each other, but tributary streams of one and the same river, either the St. John's, or the Ristigouche. And no point whatever on that due north line, other than that claimed by the United States as the north-west angle of Nova Scotia, divides the waters of the St. Lawrence from any other rivers whatever.

No boundary line, drawn from any point whatever on the due north line to the source of the River Chandiere, other than the line claimed by the United States as their boundary, can, through that whole distance; either divide the waters of the St. Lawrence from any other rivers whatever; or, if beginning at a point on the due north line south of the St. John's, divide any other rivers from each other than tributary streams of the St. John's from those of the Penobscot; and, if beginning at a point north of the St. John's, such boundary line cannot divide any rivers whatever from each other, and will only intersect various branches of the St. John's.

To assert, therefore, that the negotiators of the treaty intended to designate, as north-west angle of Nova Scotia and boundary between the two Powers, any other point or line whatever other than those claimed as such by the United States, is to assert, that those negotiators did knowingly and deliberately define that angle and boundary in terms known to them not to apply to the angle and boundary which they intended to define; that they did deliberately prescribe an angle and boundary which they knew to be physically impossible; that they did deliberately agree to a treaty of boundaries which they knew could not be executed.

There are, on the due north line drawn from the source of the St. Croix and protracted to the River St. Lawrence, but two points which divide tributary streams of rivers falling into different estuaries, viz: that which divides the waters of the St. John's from those of the Ristigouche which falls into the Bay des Chaleurs; and that which divides the waters of the Ristigouche from those of the River St. Lawrence. As Cape Rosiers is acknowledged to form the southern extremity of the mouth of that river, and Bay des Chaleurs lies south of that Cape, that Bay is an inlet of the Gulf, and not of the River St. Lawrence. That point on the due north line, which divides the waters of the River St. Lawrence from the Ristigouche, is therefore, the place prescribed by the treaty to be the north-west angle of Nova Scotia, provided the Gulf of St. Lawrence is shown to be embraced by the term "Atlantic Ocean,"

as used in that clause of the treaty which relates to the rivers which are to be divided.

The boundary claimed by the United States, from that angle to the highland acknowledged by both parties, which divides the sources of the Penobscot from those of the Chandiere, divides through the whole extent, without chasm or interruption, the tributary streams of the River St. Lawrence from those of the Rivers Ristigouche and St. John. It is, in *position*, in perfect accordance with the terms of the treaty, unless it can be shown that, in the clause last above mentioned, the term "Atlantic Ocean" does not embrace the Gulf of St. Lawrence and the Bay of Fundy, into which those rivers respectively empty themselves. And if those rivers are not, in that clause, considered as Atlantic rivers, no other boundary can be found, which in *position* will accord with the terms of the treaty.

It is contended, on the part of Great Britain, that the boundary thus claimed by the United States, wants the mountainous *character*, and the visible elevation which she ascribes to the term "highlands." The fact has not been ascertained, and, for the present, will be admitted. But it is altogether denied that the term "highlands which divide rivers" implies such character.

The word "highlands" is in itself vague and indefinite, and always relative. For that reason, it was an appropriate expression, for the purpose of designating, without reference to positive elevation, the ground which divides rivers, since that ground is always higher than the rivers which flow from it in different directions. But, used alone, it would have been altogether indeterminate and unfitted for the designation of a boundary. It is the property of dividing certain specified rivers, it is that inseparable adjunct which defines the term as used in the treaty and denotes with precision the intended boundary.

Two contradictory conditions are inadmissible in a definition. That of dividing rivers was expressed in so many words, and is therefore indispensable. The contemplated highlands must necessarily be the express terms of the treaty divide certain rivers. No other condition can be imposed on the highlands, no implied meaning can be ascribed to that word, which might be contradictory of the first clear and express condition. Nothing was known but the general course of the rivers, and it was only by referring to those rivers, that the negotiators could and did describe the boundary. The nature of the ground which divided the rivers was unknown to them, and it was not explored till the year 1818, and then only partially by the surveyors appointed under the Ghent Commission. And since the negotiators could not divine, whether it would be found mountainous, and with visible elevations, or not, the supposition that the term "Highlands" implies that condition is inad-



missible, since that second condition, might prove contradictory of the first.

But it has, besides, been conclusively demonstrated ; that the highlands acknowledged by both parties, the Highlands claimed by Great Britain, and the Highlands claimed by the United States were all designated by Pownall and others, by the name of "Height of Land," which last term is therefore synonymous with that of "dividing Highlands." And multiplied instances have been given, that the term "Height of Land" is universally, and that of Highlands occasionally, given without reference to mountainous character or visible elevation, to the ground which divides rivers, and in which those rivers have actually their sources.

It has been asserted in the British Statement that, according to geographical practice, the Bay of Fundy is not comprehended in the Atlantic Ocean. And, from the fact, that in one clause of the Treaty which does not relate to the division of rivers, the signification of the term Atlantic Ocean, on account of its being there contradistinguished from the Bay of Fundy, is limited so as to exclude that Bay ; it is inferred that it must be limited in the same manner in another clause where that term is used in reference to the division of rivers.

It has been proved by a variety of instances, that, according to geographical practice and general usage, the term Atlantic Ocean embraces its bays and inlets ; and that, more particularly in reference to that part of the said Ocean adjacent to the American shores, it embraces both the Bay of Fundy and the Gulf of St. Lawrence. It has been shown that, in the Proclamation of 1763, several rivers are described as falling into the Atlantic Ocean which have their mouths in the Bay of Chesapeake or in Albermarle Sound. And it has also been shown that, of all the rivers west of the St. Croix intended by the treaty to be divided, there is not one which does not fall into some bay known by a distinct name ; and particularly, that the Connecticut falls into Long Island Sound, which is an inlet of the Ocean more close and of a more distinct character than the Bay of Fundy.

It is contrary to all the rules of language, to suppose that a word or expression which is susceptible of more than one meaning, or the meaning of which may in two different sentences of the same instrument be limited in two different manners, by the different expressions united with it, must in both sentences have the same meaning. In one clause of the treaty, the Atlantic Ocean is contradistinguished from the Bay of Fundy, and excludes that bay alone. In the other clause which relates only to the division of rivers, those which fall into the Atlantic Ocean are contradistinguished only from those that empty themselves into the River St. Lawrence, so as to exclude only the last mentioned rivers from

those embraced under the general designation of rivers falling into the Atlantic Ocean.

The only semblance of probability in favour of the erroneous inference, in the British Statement, would be found in the supposition, that there was no reason for designating the place in which the St. Croix had its mouth; whence it might perhaps, though not very logically, be inferred, that the designation was intended to restrain in the other clause, the ordinary signification of the term Atlantic Ocean, in a different manner from that in which the term is limited in that other clause itself.

But it has been shown, that the designation of the Bay Fundy, as the particular inlet of the Atlantic Ocean, in which the River St. Croix had its mouth, might have been naturally borrowed from that adopted in all the previous public British Acts having reference to that River. And it has been demonstrated, that there was a cogent reason for making that designation in the treaty, in order to guard against any pretension, on the part of Great Britain, to claim the Penobscot or any other river west of the Bay of Fundy, as the River St. Croix contemplated by the treaty.

It has further been demonstrated, that the southern boundary of the Province of Quebec, as established by the Proclamation of 1763 and by the Quebec Act, is identic with that portion of the boundary of the United States which divides rivers. The only difference consists, in the substitution in the treaty, of the words Atlantic Ocean, instead of the word Sea used in the proclamation. Those words in relation to America are synonymous, since no other portion of the Sea washes the American shore but the Atlantic Ocean. And it has been shown that they were used as such in several instances, and even in another part of the proclamation itself. The reference in the treaty to the north-west angle of Nova Scotia puts that identity beyond a doubt. The description of that angle was foreign to the purposes of the treaty, which had for its sole object to determine the boundaries of the United States, and not the boundary between Nova Scotia and Canada, which forms one of the sides of the north-west angle of Nova Scotia. The description therefore of that angle could only be in reference to an angle previously prescribed by the public acts of Great Britain; and it was thus prescribed by the Proclamation of 1763 and the Commissions of the Governors of Nova Scotia subsequent to that date.

That the southern boundary of Canada, as established by the proclamation of 1763 was at the time and till after 1783, universally meant and understood to be the same with the boundary now claimed by the United States, is undeniable and has been fully established by the coincidence in that respect of all the maps published in England between the years 1763 and 1783. The irrelevancy of the fact, that some leases

of the fief of Madawaska which lies on the river of that name have been recorded at Quebec, and of an order forbidding Canadians to hunt on the Indian grounds of the St. John, for the purpose of proving a different understanding on the part of the Canadian Authorities, has been shown.

It has been urged, that it was impossible that Great Britain, after having rejected the proposal of making the St. John the boundary, should have agreed to that now claimed by the United States, thereby yielding a larger territory than had been asked by America and the communication between Nova Scotia and Quebec. This inference, which cannot in any case be urged against the express terms of the treaty, has also been refuted by the following facts and arguments.

The respective extent of the territories has been calculated on the part of Great Britain, by the map A, agreed to by both parties in 1827, and derived from surveys made thirty years after the date of the treaty. Calculated by Mitchell's map, the territory which would have fallen within the United States had the River St. John been made the boundary, must have been supposed greater than that contained within the boundary now claimed by them. In point of value that of the territory between the St. Croix and the St. John was, on account of its proximity to the Sea Coast as well as of its soil, without comparison, far greater than that of the country situated north of the River St. John and west of the due north line.

The southern boundary of Canada, adopted by the treaty, was established in 1763, when the object was to include the French settlements within the basin of the River St. Lawrence; and when it was a matter of indifference to Great Britain, whether the communication between Quebec and Nova Scotia was through Massachusetts, then one of her Colonies.

It has been shown that the claim of Massachusetts under her charter, though questioned by Great Britain, must have had a considerable influence on the deliberations of the negotiators, since the relinquishment by his Britannic Majesty of the territories of the respective colonies makes part of the first article of the treaty by which he recognises their independence.

Above all, it is in proof, that the British Negotiator, in the provisional articles of 1782, ratified verbatim by the definitive Treaty of 1783, did yield the pretensions of Great Britain towards the east, the north and the west, on the express condition, that the secret article, not till lately ever published, should be added; which, on the contingency of Great Britain retaining Florida, yielded to her and took from the United States twenty millions of acres; a territory three times as large as that which is now contested, and far more valuable as to soil, climate, and situation.

Finally: it is conclusively demonstrated by Mitchell's map and by the coincidence, in that respect, of all the maps published in England between the years 1755 and 1783, that the negotiators had all the topographical knowledge necessary to enable them to define with precision any boundary which they intended to establish. The undeniable truth of that fact may be verified at once by comparing Mitchell's Map with Map A, with the terms of the treaty, and with the boundaries respectively claimed by the two Powers.

It is impossible to assign any satisfactory reason, why, with that knowledge, the negotiators, if they intended to designate the boundary claimed on the part of Great Britain, did describe it in such terms as those of the treaty. It is preposterous to suppose that, with that knowledge, they should have believed, that the retention of the term Atlantic Ocean did express that presumed intention. And no terms could have been adopted more clear, precise, and appropriate than those of the treaty, for the purpose of describing the boundary claimed by the United States.

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## APPENDIX.



## APPENDIX.

### No. 1.

#### Acts of Jurisdiction and opinions entertained subsequent to the year 1783.

It is not perceived, how either any acts of jurisdiction exercised by either party over the contested territory after the date of the treaty of 1783, or any opinions entertained subsequent to that time by officers of either Government, or by any other individuals, can have any effect on the terms of the treaty, or throw any light on the intentions of the Negotiators. Yet, as an appeal has been made to them on the part of Great Britain, a review of both may not be altogether omitted.

Several documents have been adduced, on the part of Great Britain, with a view to prove that, subsequent to the Treaty of 1783, the Governments of Canada and of New Brunswick have both exercised jurisdiction over the contested territory. The irrelevancy of those relating to the sief of Madawaska, which may have taken place since that time, has already been shown. But it appears ; that in the year 1784, a native Indian was tried and convicted by a court of the Province of Quebec, and accordingly executed for a murder committed, as was suggested, on the waters of the River St. John ; that between the years 1789 and 1791, two suits were instituted and judgment obtained, before the Courts of Quebec by some inhabitants of Canada against persons residing on the River Madawaska ; that an extract from a list of the parishes in the Province of Quebec, taken from the minutes of the Executive Council for 1791, includes that of Madawaska ; and that, in the year 1785, that Council issued an order for opening a road, from Kamarouska on the River St. Lawrence to Lake Temisquata, which lies on the south-eastern side of the dividing highlands, claimed as their boundary by the United States. It will be admitted that those acts taken together afford sufficient proof of the desire and perhaps a hope at that time, that the jurisdiction of the Province of Quebec might be extended over the upper branches of the River St. John.

The following transactions throw a clearer light on the views both of that Government and of that of New Brunswick.



In the year 1787, Mr. Holland was ordered by the Governor of the Province of Quebec, to proceed to the Great Falls on the River St. John, in order to meet the Surveyor General of New Brunswick, and to assist in marking out the boundary, where it crossed the road of communication between the two Provinces. In the interview which took place between them, each party was able to prove, that the territory in question was not within the limits of the other Province.

The surveyor of New Brunswick, in conformity with his instructions from the Governor of that Province directing him to be governed by the Quebec Act, insisted that those streams alone which fall into the River St. Lawrence were in the Province of Quebec, and that those which were tributary streams of the River St. John were in the Province of New Brunswick. And he declared that he would proceed to the height of land on the carrying place, situate between the River St. Lawrence and Lake Temisquata, in order to examine which way the waters incline on the heights there, that by their course he might be enabled to ascertain the boundary between the Provinces of Quebec and New Brunswick.

On the other hand, although it could not be known with any certainty, at that time, where the due north line from the source of the River St. Croix would strike the Highlands, it was highly improbable that the point of intersection would be found as far west as the Temiskouata Portage. Mr. Holland, after urging some other considerations, accordingly represented, *"more especially, that the fixing that limit would materially affect the boundary between us and the United States of America; and that a large territory would thereby be saved, or lost to His Majesty's dominions."*

A safe and convenient communication between the two Provinces was at all events to be preserved: and how to alter for that purpose the boundary of the United States, as defined by the treaty of 1783, was the difficulty. Mr. Holland appears to be entitled to the credit of having been the first to propose the substitution of a "country extremely mountainous," to the dividing Highlands designated by that treaty. He observed that it was generally *understood* in Canada, "that the line between the Provinces of Quebec and New Brunswick, *should* run from the head of Chaleur Bay, along the Highlands, in a westerly direction to the Great Falls on the St. John's River, and from thence west, to the westernmost, or main branch of the Connecticut River."

Mr. Holland had not at that time, any knowledge of the country: but he did not fail to find it agreeing precisely with his hypothesis. Not being able to agree with the Surveyor of New Brunswick, he proceeded, he says, with his party "to the Great Falls, where we found the country *extremely mountainous*; and, from information gathered from different

persons, who have been from the St. John's River back in the country, and my own observations, have no doubt but that these mountains are the range which extend from the Bay of Chaleur to that River."

This substitution, (called a definition) of a generally or extremely "mountainous country," without regard to the division of certain specified rivers, to the "Highlands which divide the rivers," &c. has the singular advantage of rendering them moveable at will. And it cannot be doubted that, had the British Agent under the Ghent commission been from Canada, instead of New Brunswick; the mountainous country, extending westwardly from the Great Falls, would have been pertinaciously contended for in behalf of Great Britain, instead of insisting, as according to his hypothesis has been done, that the height of land, contemplated by the framers of the treaty, commences at Mars Hill.

A committee of the Executive Council of the Province of Quebec, appointed the same year, (1787) to consider that subject, appears not to have sustained to its full extent Mr. Holland's report, and to have been of opinion that, in order to extend the jurisdiction of Canada over the River St. John, an *alteration* of its existing southern boundary was absolutely necessary.

They say, "If the Province of New Brunswick may of right claim the sources of rivers that take their rise on the height of land *which divides the rivers that empty themselves into the St. Lawrence, from those which fall into the Atlantic Ocean*, the *ancient* limits of this Government will be curtailed towards New Brunswick, and Seigneuries under Canadian grants, as far back as the years 1623 and 1683, be taken into that Province," &c.

The committee then propose "that the Province of Quebec *be separated* from that of New Brunswick, by a line running along the Highlands, which extend from the head of Chaleurs Bay to the foot of the Great Fall of St. John's River, and from thence, *crossing* the river, (so as to include the whole of the portage or carrying place) and continuing in a straight line towards the sources of the River Chandiere, which rise on the Highlands, which commences at the said head of the Bay of Chaleurs, and extend all the way to the north-westernmost head of Connecticut River."

It is clear, that the committee of the Executive Council of the Province of Quebec was quite sensible that the southern boundary of that Province, as defined in the Commissions of its Governors, would curtail the *ancient* limits of Canada, as it existed under the French Government. What they propose is a substitution of Mr. Holland's hypothetical Highlands for those that had been designated by the Proclamation of 1763, by the Quebec Act of 1774, by the treaty of 1783, and by all the Commissions of the Governors of the Province, as its southern bound-

dary. They ask accordingly that the Province of Quebec *be separated* (hereafter) from the Province of New Brunswick by Mr. Holland's presumed Highlands.

The admission that the change could not be effected, without an alteration of the boundaries prescribed by the Acts of the British Government, is tantamount to an acknowledgment that an alteration of the terms of the treaty was necessary for that purpose ; since the same descriptive words are used in those Acts and in the treaty.

The conflict between the two Provinces on that occasion, and the confused arguments alleged on both sides, arose solely from their mutual wish, to appropriate to themselves what belonged to another party, and from the impossibility of reconciling the pretensions of either with, not only the treaty of 1783, but all the public acts of Great Britain relating to those boundaries.

Those documents, together with some others, were taken into consideration by the Executive Council, on the 4th August, 1792. And it was thereupon " Ordered that these papers be entered upon the minutes, and it is humbly suggested by the board, that it may be expedient to transmit copies to the Lieut. Governor of the Province of New Brunswick for his co-operating in representations *to call the attention of his Majesty's Ministers* to the adjustment of the limits necessary for preserving the public tranquillity on the borders of both Provinces."

It is not known to the American Government, whether any decision was had on that subject by that of Great Britain, or whether the abandonment of that pretension, on the part of the Province of Canada, was the natural consequence of the favorable change which, in the year 1794, took place in the relations between the two countries. But the fact is certain, that not a single subsequent act of jurisdiction over the contested territory, by Canada, has been adduced in evidence, (as certainly would have been done had any such existed,) or is known to have taken place.

It is on the contrary in proof, that no grants of land have been made by the British Government of Canada, on the waters of the River St. John, or beyond the dividing highlands claimed as their boundary by the United States. And it is also proved, by the concurrent testimony of the inhabitants on the Madawaska River, that the Mount St. Francis, which divides the waters at the Temiscouata Portage, has, for more than thirty years, been considered as the boundary of Canada, and the place beyond which no process issuing from that Province can be served.

Great Britain, on the plea of certain infractions of the treaty of 1783 alleged by her to have been committed on the part of the United States, had suspended, on her part, the execution of those conditions of the treaty, respecting boundaries, which had not been carried into effect im-

mediately after its conclusion. It was only by virtue and in consequence of the treaty of 1794, that she surrendered, and abandoned her jurisdiction over several posts and countries, within the boundaries of the United States, of which she had remained in possession ever since the year 1783.

It is therefore probable, that during the state of suspension and doubt, that existed with respect to the boundaries between the years 1783 and 1794, the Governor of Canada, who had certainly orders not to surrender the Western posts and territory, entertained the hope that the conditions of the treaty would never be fulfilled, and thinking it a favorable opportunity, made the attempt of extending his jurisdiction and actual possession in another quarter. It is certain that from that time to this day, the attempt has not been renewed by the Government of that Province.

The grants of land to the Madawaska settlers, and the jurisdiction exercised over them, by the Government of New Brunswick, are no evidence of there having been an intention prior to the treaty of Ghent, on the part of that Government, to extend its jurisdiction over the contested territory.

The remote situation of an Acadian village, which, as laid down in Bellin's and in Mitchell's Maps, was at first on an Eastern branch of the River St. John, near the Lake Freneuse or Grand Lake, preserved its inhabitants from being transported and dispersed with the rest of the original, or French, inhabitants of Acadia. They appear subsequently, to have had their village on the river, ten miles above the present site of Fredericton : and they removed thence, upwards, towards the mouth of the River Madawaska, when the British, after the treaty of 1783, extended their settlements up the River St. John. They had always resided within the acknowledged boundaries of the British Province of Nova Scotia, now New Brunswick ; and had never before submitted to the British Government.

The question respecting the true River St. Croix, was then undecided. It was impossible to know where the due North line from the source of that river would intersect the highlands. Under the belief that the Western branch of the Schoodic would be declared to be the true St. Croix, and if placing reliance on Mitchell's longitudes, the due North line would be supposed to pass West of the Madawaska Settlement.

An apology may be found in that circumstance, for the issuing of those grants, and even for the jurisdiction exercised by New Brunswick, so long as the due North line was not ascertained. It is only since the actual survey of that line, in the year 1817, 1818, that the continued exercise of that jurisdiction must be considered, and has been complained of, as an unjustifiable usurpation.

It is proper further to observe, that the Government of New Brunswick has, at no time, granted any lands in the contested territory, except to those Acadians, nor to any persons whomsoever, from the year 1794 till the year 1825.

No stress can be laid on the acts of either party subsequent to the treaty of Ghent, in relation to the contested territory which from that time became an avowed subject of discussion.

The grant of a tract of land in the year 1825, and the subsequent arrest and trial of an American citizen, have afforded just grounds of complaint. But it is remarkable, that those very acts afford an additional proof of that inconsistency which naturally grows out of the British pretension.

No act of the province of New Brunswick could make a place which lay West, to be East of the due North line, nor therefore remove the district occupied by the Madawaska settlers within the boundaries of the Province.

The only thing which is decisively proved by those acts is, that in the opinion of the New Brunswick authorities, the contested territory is not within the boundaries of Canada. And they do not seem to have perceived, that this was tantamount to an acknowledgment that it did belong to the United States. For, if not in Canada, it is because the pretended highlands, extending from Mars Hill to the North-westernmost source of the Penobscot, are not the Southern boundary of that Province.

And since the Southern boundary of Canada is identic with the Northern boundary of the United States, if that boundary is North of those presumed highlands, the territory lying South of it, makes part of the United States.

Of this the British Government seems at last to have become aware. Hence the effort, with the aid of the fief of Madawaska, and of some ancient attempts which have not been renewed for more than thirty years, to substitute for the usurped jurisdiction of New Brunswick, a pretended possession derived from Canada.

Accordingly, in the "map of the British Possessions in North America, compiled from documents in the Colonial Department," and ordered to be printed in June, 1827, by the House of Commons, the due North line is made to terminate at the Ristigouche River; the boundary line between the United States and Canada is laid down, according to the British pretension, from Mars Hill to the western source of the Penobscot; and all that lies north of that boundary and west of the due north line, including the Madawaska Settlement, is made part of Canada and not of New Brunswick.

But, whilst trying to avoid the inconsistency growing out of the

usurped jurisdiction of New Brunswick, the Colonial Department was, from the nature of the British pretension, necessarily drawn into another.

It is in proof that the western and northern boundaries of New Brunswick, and the southern boundary of Canada have not been altered since the treaty of 1763; that the legal north-west angle of New Brunswick is identic with the north-west angle of Nova Scotia, established in the year 1763, and referred to and defined in the treaty of 1763; and that that angle is accordingly at the point of intersection of the due north line with the Highlands designated by the treaty and forming the southern boundary of Canada.

Instead of being on any highland, the north-west angle of New Brunswick is, in the map in question, placed in the bed of the River Ristigouche. And, forgetting that, by the treaty, the summit of the north-west angle of Nova Scotia was also the summit of the north-east angle of the United States, the Colonial Department has placed that north-east angle at Mars Hill, fifty miles south of the point where it places the north-west angle of New Brunswick or Nova Scotia. Mars Hill, the pretended north-east angle of the United States, so far from being the north-west, is not even one of the angles of New Brunswick, but only a point on one of its boundary lines.

The same contradiction attaches to the legitimate acts of New Brunswick, in reference to the territory within its acknowledged boundaries. The jurisdiction of the Province has uniformly been exercised as far north as the Ristigouche; and its practical north-west angle, placed as far north of the pretended north-east angle of the United States, as in the map of the Colonial department.

It has been asserted in the British Statement, that the right to the possession of the contested territory, was first called in question by the United States, and that only constructively, at the period of the negotiations at Ghent, in 1814.

The right of Great Britain to the territory, had never been called in question, by the United States, before the negotiations at Ghent, in 1814, because it was then, for the first time, made known to them that Great Britain intended to set up such a claim. And her right to the possession of the Madawaska Settlement was not called in question, or even alluded to at Ghent, because it had not been ascertained at that time, whether that settlement lay east or west of the line drawn due north from the source of the St. Croix.

That line was not surveyed till the years 1817—1818: and this is also the reason why the inhabitants of Madawaska were included in the American Census of the year 1820, and not in that of the year 1810.

The remoteness of the territory on the waters of the River St. John from the American Settlements, which did not extend far up the Penob-

There can be no doubt that the north-west angle of Nova Scotia is yet to be formed, and that is to be done by forming the north-east angle of the State of Massachusetts. To do this it has become necessary to find the river which was truly meant and intended by the commissioners who describe the bounds, to find the source of that river, and to draw a line due north from thence. But even this cannot decide where the north-west angle is, because the Board has no authority to fix the line, which is to be intersected in order to form the angle, or the point of inclination of the two. The question resulting from the Treaty in regard to the line upon the highlands is reserved to a future period. This Board has no concern in it as to its principles or consequences, and the point of locality of the north-west angle is to be the investigation of the next century."

Some further explanation of the conception entertained by Mr. Sullivan of the character of the highlands, will be given in the sequel. It is sufficient here to refer to the map annexed to his History of Maine, published in 1795, in order to show, that he had no doubt respecting the position of the dividing highlands, nor as to the fact that in order to reach them the due north line must cross the River St. John. That this was also at that time the opinion of Mr. Chipman, the British Agent before the same commission, and also what his views were respecting the north-west angle of Nova Scotia and concerning the coincidence of the former boundaries, with those established by the Treaty of 1763, will appear from the following extracts of his argument before the said Commission in the year 1798:

"The limits of the Province of Nova Scotia, at the time of the Treaty of Peace, were the same that were established when the province was anciently and originally erected and named, in every respect, excepting the said Island of St. John and the northern boundary line, which, by the erection of the Province of Quebec, after the peace of 1763, was altered from the southern bank of the River St. Lawrence to the highlands described in the article of the Treaty of peace."

"If it can be shown that the river Scoodiac, so called by the Indians, is this River St. Croix, and that a line along the middle of it to its source, together with a line due north from its source, formed a part of the western boundaries of the Province of Nova Scotia, and that the highlands formed the northern boundary lines of this Province, at the time the Treaty of peace was made, so as to form the north-west angle of Nova Scotia, by these western and northern boundaries, the intention of the Treaty of Peace is at once ascertained in the great point in controversy.

"The Province of Quebec was created and established by the Royal Proclamation of the 7th October, in that year, and bounded on the south:

by the Highlands which divide the rivers that empty themselves into the River St. Lawrence from those which fall into the Sea or Atlantic Ocean, thereby altering the north boundary of the Province of Nova Scotia from the southern shore of the River St. Lawrence to those Highlands."

"It is sufficient here to observe, that at the time the Treaty of Peace was made in 1783, the Provinces of Quebec and Nova Scotia belonged to and were in the possession of the Crown of Great Britain; and that His Britannic Majesty, at that time, had an undoubted right to cede to the United States of America such part of these Territories as he might think fit; and that in making the cession of the territory comprised within the boundaries of the United States, as described in the second article of the treaty of peace, his Majesty must be supposed to have used the terms describing these boundaries in the sense in which they had been uniformly understood in the British nation, and recognised in public documents and acts of government. In this sense, and in no other, could they have been then understood, or can they now be claimed or insisted upon by the United States. In this sense, and in no other, is his Majesty bound to give the possession."

"But to apply these facts to the point more immediately under consideration—whether a line due north from the source of the western or main branch of the River Scoddiac or St. Croix, will leave to each of the parties to the treaty the source of those rivers that empty themselves or whose mouths are within its territories upon the sea-coast respectively.

"The effect, so far as regards the United States, is completely secured by the treaty in all events; and thence we have further reason to suppose it was intended to be reciprocal in this respect, if a just interpretation will warrant it. A line due north from a source of the western or main branch of the Scoddiac or St. Croix, will fully secure this effect to the United States in every instance, and also to Great Britain in all instances *except in that of the River St. John*, wherein it becomes impossible, by reason that the source of this river is to the westward, not only of the western boundary line of Nova Scotia, but of the sources of the Penobscot, and even of the Kennebec, so that *this north line must of necessity cross the River St. John*; but it will cross it in a part of it almost at the foot of the Highlands, and when it ceases to be navigable. But if a north line is traced from the source of the Cheputnatecook, it will not only cross the River St. John within about fifty miles from Fredricton, the Metropolis of New Brunswick, but will cut off the sources of the rivers which fall into the Bay of Chaleurs."

"In most, if not all, the maps of the interior country, published before the year 1783, although the courses of the River St. Croix are very inaccurately laid down, still it is very uniformly made to terminate in a lake near the eastern branch of the River Penobscot; and a line drawn



north from that termination upon those maps will not intersect any of the rivers which empty themselves into the sea, to the eastward of the mouth of the River St. Croix, *except the River St. John.*"

"As then, at the treaty of peace in 1793, the northern limit of the Province of Nova Scotia was "a line along the Highlands which divide the rivers that empty themselves into the River St. Lawrence from those which fall into the sea," it unquestionably follows that the north-west angle of Nova Scotia at the time of the treaty of peace in 1783 was that angle which was formed by a line drawn due north from the source of the River St. Croix to those Highlands. If we now compare this angle with the north-west angle of Nova Scotia described in the treaty of peace, viz : that angle which is formed by a line drawn due north from the source of St. Croix River to the same Highlands, can it be said, with any degree of propriety, that "the limits and boundaries of the Province of Nova Scotia were unknown at the time of the treaty of peace in 1783, and that it therefore became necessary to give it a western boundary by the treaty itself, in these words, to wit : that angle which is formed by a line due north from the source of the River St. Croix to the Highlands ?

"Can it be believed, or for a moment imagined, that, in the course of human events, so exact a coincidence could have happened between the actual, real boundaries of the Province of Nova Scotia, and the boundaries of it described in this treaty, if the latter had not been dictated and regulated by the former ?

"Can any man hesitate to say, he is convinced that the Commissioners at Paris, in 1783, in forming the 2d article of the Treaty of Peace, in which they have so exactly described this North-west Angle, had reference and were governed by the boundaries of Nova Scotia, as described in the grant to Sir William Alexander, and the subsequent alteration in the Northern Boundary by the erection of the Province of Quebec ?"

"The argument of the Agent of the United States would certainly apply with much greater force in proving the *Penobscot* to be the River agreed to ; *as this river, besides being once known indiscriminately with the other rivers by the name of St. Croix, has been the reputed boundary of Nova Scotia, and was contented for as such by the British Commissioners at Paris, in the year 1750, in their memorials concerning the limits of Acadia or Nova Scotia.*"

A further proof of the understanding had at that time of the necessity that the St. John must be crossed by the due north line in order to reach the highlands, is found in the following proceedings under the same commission.

Its object was to decide which was the River St. Croix contemplated

by the treaty ; and, after the Scoodiac had been decided to be the river, which was its true source ; the source generally, without designating which, being the expression used in the treaty. And three points were contended for ; first, the source of its western branch which was the most western point that could be selected ; secondly, the spot where the same branch issues from the lowest of the lakes now called Scoodiac Lakes, which was the most eastern point ; thirdly, the source of the northern branch or Cheputnatecook, which lies east of the source of the western branch, but west of the outlet of the lakes.

The British agent strongly contended for the first or most western point ; and his arguments have just now been quoted.

It was afterwards ascertained, that the Commissioners intended to declare as the true source of the Scoodiac, the outlet of the lakes, which is still further east than the source of the Cheputnatecook, but the American Agent proposed, in order to secure a small tract of valuable land between the two branches, to agree that the last mentioned source should be fixed as the true source of the river. As, for the reasons already alleged, the British Agent preferred at all events the most western point that could be obtained, he acquiesced in this proposal, provided it should be approved by Sir Robert Liston, then his Britannic Majesty's Minister to the United States. And this eminent person agreed to it for the very same reason. In his letter of 23d October, 1798, to the Agent, he says :

“It appears to me evident that the adoption of the River Cheputnatecook ; as a part of the boundary between His Majesty's American dominions and those of the United States, in preference to a line drawn from the easternmost point of the Schoodiac Lakes, would be attended with considerable advantage. It would give an addition of territory to the Province of New Brunswick, together with a greater extent of navigation on the St. John's River,” &c.

Had it not been understood that the due north line must necessarily have crossed the River St. John, the whole of that River, and of its navigation, would have belonged to Great Britain, whatever was the point from which that north line should be drawn. It was only with the understanding that that line must, at all events, cross that river, that the extent of navigation secured to New Brunswick could be greater or less, as the north line crossed the river more or less westerly. Mr. Liston, therefore, construing the treaty as every other person did at the time, knew that the highlands, designated by that instrument, must be north of the River St. John's and that the north line, in order to meet them, must cross that river.

In the course of the proceedings before the commission of 1798, the agent on the part of the United States stated, that the commissioners,

who concluded the provisional treaty of peace in 1782, marked the dividing line between the two nations upon Mitchell's Map; and he produced a map of Mitchell, as the identical copy which the commissioners had before them at Paris, which had been found deposited in the office of Secretary of State for the United States, and had the eastern boundary of the United States traced on it with a pen or pencil. In his letter of 25th October, 1784, Mr. Adams states that it was Mitchell's Map upon which was marked out the whole of the boundary lines of the United States. It does not appear that the identity of the map was questioned when thus brought before the commission. The same map was still in the office of the Secretary of State, as late as the year 1828; and the boundary lines traced upon it, first with a pencil and afterwards with a pen, were those claimed by the United States. But as it had not been certified by the commissioners to be the identical map used in the course of the Negotiations, it was not laid before the King of the Netherlands on the part of the United States, as evidence of their claim.

Several years subsequent to the proceedings of the commission of 1798, Mr. Sullivan was requested by the Department of State to communicate his ideas on the yet unsettled question of the islands in the Bay of Passamaquoddy, and to explain the difficulty which he had suggested respecting the Highlands contemplated by the treaty. His answer of 20th May, 1802, on the last subject was as follows, viz: (b)

"By the treaty of peace it is provided that the boundaries shall be, "from the north-west angle of Nova Scotia, viz: that angle which is formed by a line drawn due north, from the source of the St. Croix to the Highlands; along the Highlands which divide those rivers that empty themselves into the River St. Lawrence from those which fall into the Atlantic Ocean, to the north-westernmost head of Connecticut River."

"You will see by the maps of that part of the country, that the line which runs north from the source of the St. Croix crosses the River St. John a great way south of any place which could be supposed to be the Highlands; but where that line will come to the north-west angle of Nova Scotia, and find its termination, is not easy to discover."

"The boundary between Nova Scotia and Canada, was described by the King's Proclamation in the same mode of expression as that used in the treaty of peace. Commissioners who were appointed to settle that line have traversed the country in vain to find the Highlands designated as a boundary. I have seen one of them, who agrees with the ac-

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(b) See "Confidential Documents laid before the Senate of the United States, forming the tenth volume of State papers published by Thomas B. Wait, Boston, 1819." This work has not been alluded to in the British Statements.

count I have had from the natives, and others, that there are *no mountains or highlands* on the southerly side of the St. Lawrence and north-eastward of the River Chandiere. That from the mouth of the St. Lawrence to that river there is a vast extent of high flat country, thousands of feet above the level of the sea, in perpendicular height, being a morass of millions of acres, from whence issue numerous streams and rivers, and from which a great number of lakes are filled by drains. That the rivers originating in this elevated swamp, pass each other wide asunder many miles in opposite courses, some to the St. Lawrence, and some to the Atlantic Sea."

"Should this description be founded in fact, nothing can be effectively done, as to a Canada line, without a commission to ascertain and settle the place of the north-west angle of Nova Scotia, wherever they may be agreed to be. If there is no mountain, or national monument, an artificial one may be raised. From thence the line westward, to Connecticut River, may be established by artificial monuments, erected at certain distances from each other; the points of compass from the one to the other may be taken: and the ascertaining the degree of latitude, which each one is placed on, from actual observation, may be very useful. Though there is no such chain of mountains, as the plans or maps of the country represent under the appellation of the highlands, yet there are eminences from whence an horizon may be made to fix the latitude, from common quadrant observations."

"In the description of the morass, which is said to *crown the heights* between the United States and Lower Canada, it ought to have been noticed, that though those swamps are vastly extensive, yet in the declivity from the Atlantic to their highest elevation, as well as in their declivity to the St. Lawrence, great tracts of valuable country are interspersed."

In the instructions given by the department of state, (Mr. Madison) to Mr. King the Minister of the United States at London, concerning the division of the islands in the Bay of Passamaquoddy, and the north-eastern and the north-western boundaries of the United States, dated June 8th, 1802, the following paragraph relates to the subject in question. (c)

"In pursuance of the next object, viz: the establishment of boundaries between the United States and New Brunswick on one side, and of Canada on another, it will be proper to provide for the immediate extension of the line which is to run from the source of the St. Croix, and which is represented as necessary to guard against interfering or encroaching grants under American and British authorities. As the

course of this line is to be due north, and is to proceed from a point fixed by a survey already made, the running of it will be sufficiently provided for by an appointment of a commissioner by each of the two governments, and an appointment by the two commissioners of a surveyor. In fixing the point at which the line is to terminate, and which is referred to as the north-west angle of Nova Scotia, the difficulty arises from a reference of the treaty of 1783, "to the highlands," which it is now found have no definite existence. To cure this difficulty, no better expedient occurs than to provide for the appointment of a third commissioner, as in Article V. of the Treaty of 1794, and to authorize the three to determine on a point most proper to be substituted for the description in Article II. of the Treaty of 1783, having due regard to the general idea that *the line ought to terminate on the elevated ground dividing the rivers falling into the Atlantic from those emptying themselves into the St. Lawrence*. The commissioners may also be authorized to substitute for the description of the boundary between the point so fixed and the north-westernmost head of Connecticut River, namely, a line drawn "along the said highlands," such a reference to intermediate sources of rivers or other ascertained, or ascertainable points to be connected by straight lines, as will admit of easy and accurate execution hereafter, and as will best comport with the apparent intention of the Treaty of 1783."

It appears by Mr. Sullivan's Letter, that he had no doubt that the due north line must cross the St. John far south of the highlands contemplated by the treaty. He thought that the ground, in which the rivers originated, flowing in opposite courses to the St. Lawrence, and to the Atlantic, was a morass of millions of acres, a vast extent of high flat country thousands of feet above the level of the sea, through which he apprehended some difficulties in tracing the boundary. No such difficulty occurs, but his principal error consisted in confounding the term "highlands," the technical meaning of which has been fully explained, with "chain of mountains."

Mr. Madison, whilst he repeats after Mr. Sullivan, that the highlands have no definite existence, by which he means that the highlands are not mountains, saw very clearly, that the due north line ought to terminate on the elevated ground dividing the rivers falling into the Atlantic from those emptying themselves into the St. Lawrence. And in order to obviate the suggested difficulty in surveying the boundary along the highlands, he proposes a reference to intermediate sources of rivers (to be named in the Convention) to be connected afterwards by an actual survey. That reference to unknown and nameless sources was not practicable: and Mr. King concluded on the 12th May, 1803, a conven-

tion with Lord Hawkesbury, which provides for an actual survey of the boundary ; as appears by the following articles of the same :

“ Art. II. Whereas, it has become expedient that the north-west angle of Nova Scotia, mentioned and described in the treaty of peace between his Majesty and the United States, should be ascertained and determined, and that the line between the source of the River St. Croix, and the said north-west angle of Nova Scotia, should be run and marked according to the provisions of the said treaty of peace ; it is agreed, that for this purpose, commissioners shall be appointed in the following manner, viz : one commissioner shall be named by his Majesty, and one by the President of the United States, by and with the advice and consent of the Senate thereof, and the said two commissioners shall agree in the choice of a third ; or if they cannot agree, they shall each propose one person, and of the two names so proposed, one shall be taken by lot in the presence of the two original commissioners ; and the three commissioners so appointed shall be sworn, impartially to ascertain and determine the said north-west angle of Nova Scotia, pursuant to the provisions of the said treaty of peace, and likewise to cause the said boundary line between the source of the River St. Croix, as the same has been determined by the commissioners appointed for that purpose, and the north-west angle of Nova Scotia to be run and marked according to the provisions of the treaty aforesaid.”

“ Art. III. It is further agreed, that the said commissioners, after they shall have executed the duties assigned to them in the preceding article, shall be, and they hereby are authorised, upon their oaths, impartially to ascertain and determine the north-westernmost head of Connecticut River, according to the provisions of the aforesaid treaty of peace, and likewise to cause the boundary line, described in the said treaty of peace, between the north-west angle of Nova Scotia, and the said north-westernmost head of Connecticut River, to be run and marked pursuant to the provisions of the said treaty.”

No objection was made to those provisions : but the Senate of the United States refused its assent to the ratification of the Convention, unless an article was added explanatory of that which provided for the settlement of the north-western boundary between the two Powers. This having been refused by Great Britain, the Convention was not carried into effect. Another similar and unsuccessful attempt was made in 1807 by Mr. Monroe then Minister of the United States at London. The subject was at last disposed of on the same principle in the year 1814 by the Treaty of Ghent. But the propositions discussed during the course of the negotiation deserve consideration.

The British Plenipotentiaries at that time, when explaining what they meant by a revision of the frontiers generally, and after saying that Great

Britain did not desire it with any view to the acquisition of territory, ~~as~~ *such*, enumerated amongst the subjects of discussion, not the ascertaining in the conformity with the treaty of 1783, but "such a VARIATION of the line of frontier, as might secure a direct communication between Quebec and Halifax."

This was not a casual expression, but a deliberate and solemn exposition of the terms on which Great Britain proposed to make peace. There could not be a more express acknowledgment than the proposition made under such circumstances, and in such terms, that the desired communication could not be obtained without a *variation* of the line established by the treaty of 1783.

It was only after the explicit declaration of the American Plenipotentiaries, that they had no authority to cede any part of the territory of the United States, and would subscribe to no stipulation to that effect; and after having lost all hope of obtaining a variation of the line, that the British Plenipotentiaries changed their ground. It was then, for the first time, gratuitously asserted, that the American Plenipotentiaries were aware that the boundary *asserted at present by the American Government*, by which the direct communication between Halifax and Quebec became interrupted, was not in contemplation of the British Plenipotentiaries who concluded the treaty of 1783.

Even this assertion was accompanied by a declaration, that the British had not anticipated the statement made by the American Plenipotentiaries,—viz: that they had no authority "to cede any part, however insignificant, of the territories of the United States, although the proposal left it open to them to demand an *equivalent for such cession*, either in frontier or otherwise."

The American Plenipotentiaries answered, that they had never understood that "the British Plenipotentiaries who signed the treaty, had contemplated a boundary different from that fixed by the treaty, and which required nothing more in order to be definitively ascertained than to be surveyed in conformity with its provisions;" and that they had "no authority to cede any part of the State of Massachusetts, even for what the British might consider a fair equivalent." And they subsequently declared "that they did not decline discussing any matter of uncertainty or dispute respecting the boundaries in that or in any other quarter," and that they were "prepared to propose the appointment of commissioners by the two governments to extend the line to the Highlands, conformably to the treaty of 1783." But they added that "the proposal, however, of the British Plenipotentiaries was not to ascertain, but to vary, those lines, in such manner as to secure a direct communication between Quebec and Halifax; an alteration which could not be effected, without a cession by the United States to Great Britain of all that portion of the

State of Massachusetts intervening between the Province of New Brunswick and Quebec, although unquestionably included within the boundary lines fixed by that treaty.

To this last observation the British Plenipotentiaries replied, that the British Government never required that *all that portion* of the State of *Massachusetts* intervening between the Province of New Brunswick and Quebec, *should be ceded* to Great Britain, but only that small portion of unsettled country which interrupts the communication between Halifax and Quebec, there being much doubt whether it does not already belong to Great Britain.

The proposal of the American Plenipotentiaries to appoint commissioners was acceded to, and extended to the whole line of frontier, from the source of the River St. Croix, to the Lake of the Woods. And the contingency of a disagreement between the two commissioners was provided for. No power to vary the line was given in either case; it being expressly provided that the boundary should be ascertained and surveyed in conformity with the provisions of the treaty of 1783.

Thus it appears, that the American Plenipotentiaries denied the intentions ascribed to the British Ministers who had signed the treaty; that they uniformly rejected any proposal to vary the line, and to cede any part of the territory of the United States, or of the State of Massachusetts; and that they agreed to the reference, only on the general ground of leaving to an amicable mode of settlement all the questions relative to the whole of their extensive frontier, which had not yet been actually ascertained and surveyed.

It may now be asked, whether a demand made, on a most solemn occasion, by the British Government itself, of a variation of the boundary line defined by the treaty of 1783, at the same time that another demand was also made of one half of the great lakes, and of the rights of sovereignty over the shores secured to the United States by the same treaty; whether such demand, under such circumstances, was not a most explicit acknowledgment of the previous undoubted right of the United States to that territory, and does not decisively refute the late assertions of an exclusive and undisturbed possession by Great Britain, and of a constructive claim but lately advanced by America.

An allusion has been made, in the British Statement, to a letter written by one of the American Plenipotentiaries to his Government, the day subsequent to the signature of the treaty. Every thing contained in a letter of that description is wholly irrelevant to the question; since a minister, when writing *to*, does not act as the organ of his Government. It might be sufficient to observe, that it has been fully demonstrated, by the very document to which he appealed, that the American Plenipotentiary was altogether mistaken in supposing that the con-



tested territory was not within the boundaries of the State of Massachusetts ; and secondly, that if the boundary lines designated by the previous public acts of Great Britain, and adopted by the treaty of 1783, had embraced any portion of territory not included within the chartered limits of Massachusetts' Bay, such portion would nevertheless have belonged to the United States.

But, as the allusion is made to the writer of this essay, he will ask the permission, though a matter purely personal and irrelevant to any question at issue, to state the cause of his mistake.

In the year 1810, whilst Secretary of the Treasury, he had in charge a compilation of the laws and other public documents respecting the public lands. To this he prefixed an introduction explanatory of the title of the United States to the public lands, as derived from treaties and from the cessions of the individual States ; and a note is appended to that introduction (Page xiv,) in the following words, viz : (d)

"The title of the State of Massachusetts to the territory north of the old province of Maine, between New Hampshire and the river Kennebec, is not understood. The northern boundary of that province is by the charter of 1691 fixed at 120 miles from the sea, and no subsequent document has been seen, extending the province to the northern boundary of the United States. Thence it would seem that the territory west of Kennebec and north of the boundary established by the charter, vested by the treaty of peace in the United States and not in the State of Massachusetts. The same observation applies to a small tract in the possession of New Hampshire, lying north of the 45th degree of north latitude ; that parallel appearing to have been the northern boundary of the province whilst under the British government."

In the year 1814, and at Ghent, that individual had not before him the charter of Massachusetts, but recollected that there was a certain portion of territory not included within the limits designated by that charter, though within the boundaries established by the treaty of 1783. He confounded that tract which lies west of the Kennebec with the territory east of the Penobscot, and alluded also erroneously to the 45th parallel of latitude which is the northern boundary of New Hampshire, as being that of Massachusetts.

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(d) That note is also transcribed in Colvin's edition of the laws and other public documents of the United States. Vol. I. Page 454.

## No. II.

Notes on an essay in the Westminster Review for June, 1840, signed  
C. B.

THE anonymous author of this essay is entitled to praise for his candour and liberal spirit, as regards the general relations between the two countries. But neither liberality, knowledge, or talent can perform impossibilities. The writer could not persuade himself to abandon the pretensions advanced by former British Agents and unfortunately sustained by his Government. He repudiates all their arguments but one, and yet cannot help contradicting himself. The case was desperate, and he has suggested a novel but most extraordinary remedy.

He commences the recapitulation of his reasonings in the following words, viz :

"The boundary lines of the treaty of 1783 were not new lines, but the old acknowledged though unascertained lines assigned by the proclamation of 1763, the act of 1774, and the various commissions of the Governors of the two Provinces of Quebec and Nova Scotia."

"The only significant difference between the terms in which the boundaries are described in the preceding documents, and those which are used in the treaty, is that of the substitution of 'Atlantic Ocean' for 'Sea.' As the term 'Atlantic Ocean' is always in the treaty and in the commissions of the Governors used in a restricted sense, never as comprehending the Bay of Fundy and Gulf of St. Lawrence, but frequently in contradistinction to them ; the deliberate substitution of it for the more general term 'the Sea,' must lead to the inference that that change of this single term was meant to mark that the water courses divided by the highlands were those of what we have called the St. Lawrence and Atlantic basins."

Now, if that significant difference, if that deliberate substitution of the term "Atlantic Ocean" for that of "Sea" has caused such an alteration as to exclude the St. John and Ristigouche basins from the water courses divided by the Highlands ; it is very clear that the boundary lines of the treaty of 1783 were not the old acknowledged lines assigned by the former Acts of the British Government. And if the substitution of a new for the old term has caused no such alteration, the term "Atlantic Ocean" in the treaty is synonymous with the term "Sea" used in the Proclamation.

If no alteration was made by the change of the term and the boundaries remain the same, no argument can be deduced from that change, to prove that the term "Atlantic Ocean" must, in the clause of the treaty

which relates to the division of rivers, be taken in a restricted sense other than is expressed in the clause itself.

If such important alteration was made by the change of the term and the boundaries are no longer the same, the author of the essay cannot appeal to the proclamation and particularly to the mention made in it of the Bay des Chaleurs, for the purpose of explaining the terms of the treaty.

The only arguments of the former British Agents which the writer of the essay seems to have preserved, are those adduced in order to prove that the term "Atlantic Ocean," in the clause of the treaty which relates to the division of rivers, must be so construed as to exclude the St. John and the Ristigouche from the Atlantic rivers contemplated by the treaty. It is not necessary to state again here at large the arguments and the illustrations adduced in the preceding pages in order to refute that interpretation of the clause in question. One only of the illustrations and one of the arguments will be repeated.

Subsequent to the Treaty of 1763, it appears that the words "Atlantic Ocean" were substituted for the word "Sea," in the commissions of the governors of the Province of Quebec. On the 27th of April of the year 1786, Sir Guy Carleton was appointed Governor of New Brunswick. The Province is in the commission declared to be bounded, to the eastward by the Bay des Chaleurs and the Gulf of St. Lawrence, to the south by the Isthmus and by the Bay of Fundy, on the westward by the River St. Croix to its source, and by a line drawn due north from thence to the southern boundary of the Province of Quebec, and to the northward by the said boundary as far as the western extremity of the Bay des Chaleurs. In that commission the Atlantic Ocean is not mentioned, and the Gulf of St. Lawrence, the Bay des Chaleurs and the Bay of Fundy are each designated by their specific names. But the southern boundary of the Province of Quebec, was declared to be the northern boundary of the Province of New Brunswick. In a commission to Sir Guy Carleton as Governor of the Province of Quebec, dated the 22d of April of the same year, the southern boundary of the Province is defined to be "a line from the Bay of Chaleurs along the highlands which divide the rivers that empty themselves into the River St. Lawrence from those which fall into the *Atlantic Ocean*, to the north-westernmost head of Connecticut River," &c. Every river without exception, which has its source in, or flows through New Brunswick, falls either into Bay des Chaleurs, the Gulf of St. Lawrence, or the Bay of Fundy. All the rivers therefore contemplated in the description of the northern boundary of New Brunswick, which is identic with the corresponding portion of the southern boundary of the Province of Quebec, as falling into the Atlantic Ocean, do actually fall into one of those three

inlets specifically designated by their distinct names in the commission for New Brunswick. The term "Atlantic Ocean" embraces, and embraces nothing else but those three inlets.

The object of the treaty was to define the boundaries of the United States, and not those between the Provinces of Quebec and Nova Scotia. It was foreign to the purpose of the treaty to describe the north-west angle of Nova Scotia, one side of which is formed by the last mentioned boundary. The reference in the treaty to that angle is necessarily to an angle formerly prescribed by the public acts of Great Britain, viz: the Proclamation and the Quebec Act. The United States have thence deduced one of the most conclusive proofs of the identity of the boundary defined in the Treaty with that prescribed by the Proclamation of 1763 and by the Act of 1774 without any change or alteration, of the consequent synonymy of the terms Atlantic Ocean and Sea, and of the necessary conclusion that the St. John, and the Ristigouche are to be taken in the Treaty, as they were in the Proclamation, as rivers falling into the Atlantic Ocean.

If it could be admitted that the term "Atlantic Ocean" was to be taken in the clause which relates to the division of rivers, in the restricted sense ascribed to it on the part of Great Britain, it has always appeared to the United States that the necessary inference was an impossibility to carry the Treaty into effect. For in that case, it was utterly impossible that any boundary *line* could be run from the due north line towards the sources of the Chaudiere, that could fulfil the absolute condition of dividing certain specified rivers, imposed on that portion of the boundary by the express terms of the Treaty. And from that necessary consequence, combined with the knowledge which the negotiators of the Treaty had of the topography of the country, the conclusion, irresistible as it is believed, has been drawn, of the absurdity of supposing that they could have ascribed to the term "Atlantic Ocean" the restricted sense above mentioned.

It is in order to get rid of that apparently insurmountable difficulty, that the author of the essay has resorted to the singular but novel expedient of substituting for a boundary line, a district of country containing more than seven millions of acres, and embracing what he properly calls the St. John and Ristigouche basins. The only reason given in support of that interpretation of the treaty is the admitted fact that with the restricted sense ascribed to the term Atlantic Ocean, it is impossible, to draw a boundary *line*, that will fulfil the conditions of the treaty. For the author was misinformed when he adduces as another reason, that the names of height of land (or highlands) seem to have been often applied to the whole territory in question, and that it would have been in

accordance with the language in which it was commonly spoken of for the negotiators to designate it as the highlands.

Having assumed the principle that the dividing highlands of the treaty must be the whole highland country (as he calls it) extending over the disputed territory ; the author admits that the treaty is not sufficiently explicit to determine the position or course of the boundary line, and resorts to the description of the boundary in the proclamation and in the Quebec Act.

It has already been observed, that it is only by withdrawing his objection to the American line, derived from the substitution of the words Atlantic Ocean for the word Sea, and by acknowledging the complete identity of the treaty highlands with those of the proclamation, that the author of the essay can have a right to appeal to the proclamation and to the Quebec Act for the purpose of explaining the treaty. There is another apparent difference between the treaty and those two instruments. In the treaty it is declared that the boundary shall be along the dividing highlands and not that the boundary shall be, as in the proclamation and in the Quebec Act, a line along the dividing highlands. Yet, I do not believe that the author, when alluding to that circumstance, intended to rest his argument on that nice distinction, on the omission of the word *line* in the description in the treaty of that part of the boundary ; and to say, that, if the framers of the treaty had called that part of the boundary a line, he could not have assumed that, by the boundary prescribed by them they meant a large tract of country and not a line.

It is proper here to observe, that the boundary along the highlands could not be a mathematical line. There is always a certain distance between the sources of the rivers flowing in different directions. The ground, or highlands, which divide those sources always has some and a varying breadth, which leaves some latitude respecting the actual position of the line ultimately to be drawn between those sources, and required therefore that the line should be ascertained and surveyed by the common act of the parties. The same observation applies to the case when a river or a lake is made the boundary. Although the line is then partly determined by the word "middle;" even what is meant by that word, the selection of the dividing channel and the division of the islands, remains to be settled by the common act of the parties. The provision in the Treaty of Ghent applied to the whole boundary from the source of the River St. Croix to the north-westernmost extremity of the Lake of the Woods ; and it was expressed in the same terms in reference to every part of the whole boundary. The object has been effected with respect to the River St. Lawrence, to the lakes, and to the water communications between the lakes, though the division of many valuable islands must have been attended with considerable difficulty. In proposing that

article in the treaty of Ghent and on two previous occasions, the United States contemplated a similar operation, and not having the slightest conception of the pretensions of Great Britain subsequently disclosed, did not apprehend any serious difficulty from the vague suggestions of some doubtful claim, on her part, which were thrown out during the course of the negotiation.

The inference drawn from the proclamation and the Quebec Act is, that the boundary line was to connect the head of the Bay des Chaleurs with the head of the Connecticut River, or perhaps, with the highland which divides the sources of the Chandiere from those of the Penobscot. "The extremities of the line (it is said) are thus known, but the mode of drawing it is entirely unexplained. An infinite number of such lines corresponding with the description given in the treaty may be drawn."

As far as the United States are concerned, the eastern extremity of the line is not the Bay of Chaleurs, but the place where it was necessary to leave the dividing highlands in order to reach the head of the Bay of Chaleurs. On what point of the highlands the intended connection with the Bay of Chaleurs was to take place was left undetermined in the proclamation and in the Quebec Act, which did not even mention the western extremity of the bay. By those instruments, the point in question was left to the discretion of the Crown, but could not subsequent to the treaty be west of the due north line. The dividing highlands of the proclamation of the Quebec Act and of the treaty terminate at Cape Rosier; but they must be left at some point east of the due north line, in order that the contemplated boundary may extend to the western extremity of the Bay of Chaleurs.

Amongst the infinite number of lines corresponding with the treaty which, according to the author of the essay, may be drawn between the head of the Connecticut and that of the Bay of Chaleurs, he proposes as the simplest expedient a straight line from one point to the other. And he adduces, as corroborating his theory, the fact, that the River Ristigouché, which is now the boundary between Canada and New Brunswick, and the northwest angle of this last province, which practically is at the intersection of that river with the due north line, are nearly on the straight line which he proposes. He adds that several of the maps published between the years 1763 and 1783 had placed that boundary along the Ristigouche, and that New Brunswick had never exercised jurisdiction beyond that river. Whence he infers that the Ristigouche and not the line of dividing highlands, was at the time of the treaty considered, as the southern boundary of the Province of Quebec under the previous acts of the British Government.

It has never been denied that subsequent to the treaty, the boundary between New Brunswick and Canada, and consequently the north-west

angle of New Brunswick might at any time be altered by Great Britain. The fact, therefore, that the Ristigouche is the present boundary, and that the jurisdiction of New Brunswick does not extend beyond it, proves nothing. But if it could be established, that that river was the acknowledged boundary at the time of the treaty, it might be inferred that the dividing highlands and the north-west angle of Nova Scotia contemplated by the treaty were not south of that river; and perhaps on the other hand, that the point at which it was necessary to leave the dividing highlands in order to strike the western extremity of the Bay of Chaleurs, had been supposed to be near the sources of the Ristigouche. And as the publishers of maps had no precise data in that respect, it is not astonishing that some of them should have thus placed the north-west angle and the boundary. All that the United States insist upon is, that the north-west angle of Nova Scotia declared by the treaty must necessarily have been that which had been prescribed by the previous acts of the British Government; that by the treaty the summit of that angle was placed on the dividing highlands and those highlands declared to be one of the sides of that angle; and therefore that neither that angle nor that boundary, at least for some distance east of the summit of the angle, were understood at the time of the treaty to be in the bed of the River Ristigouche, or any where else than on the aforesaid dividing highlands.

The gentleman cannot seriously assert, that the fact, that the Ristigouche and the present north-west angle of New Brunswick, happened to be near a straight line drawn from the western extremity of Bay of Chaleurs to the sources of the Chandiere or of the Connecticut, were at all taken into consideration when that boundary was established by the Crown, or agreed on with its approbation by the two provinces. But, amongst the infinite number of lines which might be drawn between the two points aforesaid, the straight line is precisely that which should in the first place be rejected, since, had that been the boundary contemplated by the negotiators, it was the only line which without any regard to the topography of the country, and without the slightest difficulty they might have defined with precision. When the author of the essay says, that it was safer and simpler for those negotiators to adopt the straight line, than to trust to the uncertain information respecting the course of mountains or rivers in the interior, he forgets that, instead of pursuing that course, they described the boundary only in reference to the rivers intended to be divided.

But it is altogether denied, that the treaty is susceptible of that construction now for the first time attempted to be put upon it. It was not till thirty years after the date of the Treaty of 1783, that, at Ghent, the British Government, after having first asked a variation of the boundary and a cession of territory, for which an equivalent might have been ask-

ed, did for the first time suggest that there was a doubt whether that territory or a small portion of it did not under the Treaty of 1783, belong to Great Britain. In the year 1718, the claim for the first time assumed a definite shape; and from that time till now it has been contended that the boundary was a *line* extending about one hundred and twenty miles in a straight line from Mars Hill, to one of the sources of the Chaudiere, along highlands which divide the waters of the St. John from those of the Penobscot. The claim was in that shape, and thus defined, submitted to the King of the Netherlands. And now after twenty years of discussion, an attempt is made to abandon the claim so long contended for; and it is for the first time, near sixty years after the date of the Treaty, discovered that the boundary prescribed by the Treaty was not a line of dividing highlands, in the sense in which those expressions had always been understood by both parties, and by every individual who had attended to the subject both before and since the Treaty, but that it is a district of country of seven millions of acres. The reason assigned is, that the word "highlands" used alone has sometimes, in one instance at least, been applied to a mountainous district of country. It is not less true that the territory in question has never, as a whole, been designated by that name, or by any other name whatever till called the contested territory. The true reason is to be found in the physical impossibility of finding any other line, than that claimed by the United States, which can fulfil the express condition of dividing the rivers specified by the Treaty. The boundary must ultimately be a line, and the object, in pretending that the whole contested territory is the boundary prescribed by the Treaty, is to have ultimately for a boundary a line that will not, in conformity with the Treaty, divide the rivers specified by its terms. It would have been shorter to propose that the clause, which imposes on the boundary along the highlands the condition of dividing the specified rivers, should be struck off from the Treaty.

Two Powers might under certain circumstances, and particularly in America, agree to leave between their possessions a certain uninhabited tract of country, not to be occupied by either at least for a limited time. But most certainly such agreement must be made in express terms, and never can be implied or inferred, when the parties actually declare and define what their boundaries shall be. No instance can be adduced of any treaty declaratory of boundaries, and having no special exception, ever having been concluded between two countries, in which the boundary was a district of country and was not a boundary line in the sense in which it is universally understood, viz: a line, a dividing ridge, the top of a chain of mountains, a river or a lake.

In the present instance, the negotiators describe every other part of the boundary with the utmost precision of which it was susceptible. It



is in every case, a due north, west, or east straight line, or the line along the middle of rivers or lakes, or a line between two determined points, (from the entrance of the Lake of the Woods to the most north-western point thereof,) or, if an inflected line, by three points (from the entrance of Lake Superior, through Lake Superior, north-ward of the Isles Royal and Philipeaux, to the Long Lake.) It has been proved beyond contradiction, that they had a knowledge of the topography of the country through which the north-eastern boundary was to pass, amply sufficient to enable them to describe any they might have contemplated, with the utmost precision in reference to rivers.

Finally, after the absolute rejection of the proposal, to leave the question of the boundaries between Massachusetts and Nova Scotia, embracing of course the north-west angle of that Province and the boundary with Canada, unsettled for the present; and after the negotiators had positively determined, in order to prevent any future disputes, to declare and establish those boundaries by the treaty itself; we are now told that, with that determination and with all the knowledge sufficient to carry it into effect, they actually made the whole district of country, the boundaries of which they had determined to establish, to be the boundary itself; or in other words, that after having determined to establish the boundary lines in question, they left the whole subject precisely as they had found it, to be thereafter a subject of dispute and discord between the two Powers.

The author of the essay has displayed a most liberal and proper spirit, in the view he has taken of the exaggerated importance heretofore ascribed to the subject of difference between the two countries, of the necessity of preserving the friendly relations between them, of the extreme folly of running the risk of a rupture for such an object. He is most sincere in his wishes that the difference may be speedily settled; and it is much to be regretted that he should by his suggestion have unconsciously thrown another obstacle to an amicable reference to a third party.

In such a reference the United States have no guarantee but in the justice of their cause and in the disinterestedness and firmness of the Arbiter. No happier selection could have been made than that of the King of the Netherlands: an enlightened and conscientious Monarch, not afraid of labor, and who would examine the subject and decide himself. I am very sure, that, entertaining doubts, which I must be permitted to say I do not share, on one branch of the subject, yet not such as positively to decide upon it, he proposed such an arrangement as appeared to him most equitable under all the circumstances of the case. But the United States have no means of influencing a decision. Generally speaking, it would be difficult to select any Power acceptable to

both parties who, from their relative geographical situation, and political position, has not a greater interest in cultivating the friendship of Great Britain in preference to that of the United States. Hence the necessity that there should be nothing vague, indefinite, or arbitrary in the question submitted to the Umpire: and it is for that reason that his authority was limited to the decision of a boundary in conformity with the provisions of the treaty of 1793.

If upon a view of the whole case, the arbiter thinking, as the author of the essay does, that neither of the two lines, heretofore claimed by the two parties respectively, fulfils the conditions of the treaty; and believing, as appears to me indubitable, that if the American line does not, no other possible line can divide the specified rivers, he must necessarily decide that the treaty cannot be executed: and, in that case, the two Powers would be left in no worse situation than they now are, and must settle the difference by an amicable adjustment between themselves.

But the author of the essay contends, that it is not necessary that the boundary line should actually divide the rivers. He thinks that provided it unites the Bay des Chaleurs and the sources of the Chandiere, it will be in conformity with the provisions of the treaty, and therefore that, out of the infinite number of lines which may be thus drawn, the Arbiter may select any one he pleases under the authority given to him to decide according to the provisions of the treaty.

In that view of the subject, it is a mockery to say that his business will be "to fix the position of the northwest angle of Nova Scotia, and mark out the unascertained portions of the boundary according to the provisions of the treaty, without determining, previously to the formation of a convention, any of the conditions on which the decision is to be made." The author expressly contends that the entire upper basins of the St. John and Ristigouche, that is to say, the whole contested territory are, according to the treaty, the boundary intended to divide the waters of the St. Lawrence from those of the Atlantic Ocean; and he insists that the treaty prescribes nothing concerning the manner in which the ultimate boundary line is to be run, provided it keeps within the limits of those basins and unites the two extremities which he has designated. The proposition is simply that, under the proposed reference, the Arbiter should have a right to decide what shall be the boundary line without any regard to the provision of the treaty which directs that boundary to be along the highlands which divide the specified rivers. It is nothing more or less than a renewed attempt to dispense with that express and fundamental provision.

Whether the government of the United States and the State of Maine will be disposed to refer the subject in such unrestricted and indefinite

manner, it is not for me to say : nor do I know how far the government of Great Britain may countenance the suggestion. But it gives such new aspect to the question of reference, that it cannot but protract and embarrass the pending negotiations on that subject.

If referred in that indefinite manner and without a previous understanding with Great Britain, the Arbiter will be authorized, first to decide whether, according to the new suggestion, the whole disputed territory is the boundary prescribed by the treaty, and if he should decide this affirmatively, any line whatever, within the limits of that territory, which he might deem proper to designate, would be the boundary line according to the terms of the treaty. On that principle it is not perceived, for what reason the author of the essay considers the award of the King of the Netherlands as not binding on the parties. According to his theory, the line recommended by the King conformed as well to the terms of the treaty as any other.

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### No. III.

#### Observations on the report of Messrs. Featherstonhaugh and Mudge.

The important questions at issue between the two Powers, are :

In reference to the British line as heretofore claimed or as modified by the late English Commissioners ; whether Highlands which, for three-fifths of the distance, divide the waters of the Penobscot from those of the St. John, are Highlands which divide rivers that empty themselves into the River St. Lawrence from those which fall into the Atlantic Ocean.

As relates to the boundary uniformly claimed by the United States ; whether the St. John and the Ristigouche are under the treaty to be considered as falling into the Atlantic Ocean ; and whether the term " Highlands dividing certain specified rivers " implies a mountainous ground having peaks or visible elevations.

As applicable to both lines ; whether the Negotiators had a knowledge of the topography of the country, sufficient to enable them to describe with precision, in reference to rivers, any boundary they intended to prescribe.

The report of the late British Commissioners is silent on the two first, and throws no additional light on the two last questions. The first part and the latter portion of the second part treat only of points of subordinate importance. Though rejecting one of the positions assumed

by their predecessors, the Commissioners appear to have taken for granted, that the true questions at issue had been definitely settled by the former agents of the British Government.

The first part of the report is intended principally to prove that Massachusetts had not at the date of the treaty any claim to the disputed territory. This proposition will be examined in detail, not on account of its intrinsic importance, but because the Commissioners consider that point as one concerning which they have made a great discovery.

By the charter of 1791, the territory called Acadia or Nova Scotia, and all that tract of land lying between the said territories of Nova Scotia and the said Province of Main, (meaning the ancient Province of Main which was bounded on the east by the Kennebec River,) were annexed to the Province of Massachusetts' Bay.

It will be seen, by reference to the Introduction to the preceding argument, that, by the operation of the treaty of Ryswick, Nova Scotia was severed from Massachusetts, and erected into a separate government after its cession to Great Britain by the treaty of Utrecht; that it was afterwards questioned by the British Government, whether the tract of country lying between Nova Scotia and Kennebec was not also taken from Massachusetts' Bay by the operation of the treaties of Breda and Ryswick; that, notwithstanding the opinion given in 1731 in favour of the claim of Massachusetts by the Law officers of the Crown, the British Cabinet did not consider the question as definitively settled as late as the years 1763-1770; but that the question respecting the validity of a charter could not be decided otherwise than by a legal process, and that this was never attempted by the British Government.

As regards that objection which embraces not only the territory now disputed, but the claim of Massachusetts to the whole country along the Sea Coast between the St. Croix and the Kennebec, the report does not appear to contain any thing which had not already been mentioned. But there is an omission, concerning the restitution by Great Britain to France agreed on by the treaty of Ryswick, as understood by the British Government subsequent to that treaty. The following passage occurs in the first American Statement laid before the King of the Netherlands:

"Great Britain, however, agreed by the Treaty of Ryswick of 20th September, 1697, to restore to France 'all countries, islands, forts, and colonies, wheresoever situated, which the French did possess before the declaration of war.' Acadia, or Nova Scotia, being clearly embraced by those expressions, and being thus severed from the British Dominions, the clause of the Massachusetts' Charter, which annexed that territory to Massachusetts, was virtually repealed, and became a nullity. *The understanding of the British Government of the extent of that res-*

*stitution, will be found in the following sentence of a letter from the Lords of the Board of Trade, dated 30th October, 1700, to the Earl of Bellamont, the Governor of Massachusetts, viz: "as to the Boundaries, we have always insisted, and shall insist upon the English right as far as the River St. Croix."*

The first part of that passage, as far as the word "nullity" is quoted, but the latter part which shows how the obligation to restore was understood by the British Government, is omitted in the report (page 15,) and is not stated any where else.

It is, however, principally to the limits of the claim of Massachusetts, that the objections in the report do apply. In that respect, the report has added two facts to those which had been previously quoted; first, that the French Government of Acadia was, in the Commission of 1603 to De Monts, limited on the north by the 46th parallel of latitude; secondly, that the intervening possession of New York by the Dutch was at least one of the reasons why the Grant of 1664 to the Duke of York was renewed in 1674. The renewed grant, however, embraced both New York and Sagadahock.

It is impossible to say how far the limits of Acadia were enlarged or altered by France subsequent to the first commission of De Monts in 1603. And, if the respective claims of France and of Great Britain were the subject of discussion, I would admit that, in my opinion, and contrary to the construction put on the Treaty of Ryswick by the Board of Trade in their letter to the Earl of Bellamont, the restitution to France, as agreed on by the said Treaty, of all the countries which she did possess before the war, extended as far west as the Penobscot. But, in a discussion between Great Britain and a British Colony, respecting the chartered boundaries of that Colony, the public Acts of Great Britain and her construction of her treaties with foreign nations can alone be taken into consideration, unless set aside by a legal process and decision.

I agree entirely with the Commissioners in the opinion, that the claim of Massachusetts, both as to the whole country in question and as to its limits, was, till the year 1763, exclusively derived from the Charter of 1791. The reasoning adduced in 1782 by a committee of Congress, in order to show that the claim of Massachusetts might extend along the Sea Coast as far east as the St. John, appears to me altogether erroneous. The claim is founded on the incorrect presumption, that the former grant to the Duke of York might have been interpreted, as extending to that river. But supposing that conjecture to have been well founded, there was an end to the Grant and to its boundaries. The Grant had merged in the Crown at the accession of James 2d to the throne, and was no longer in existence. No allusion whatever is made

to it in the Charter, the boundaries of which are determined by the charter itself and no where else. The grant had been quoted for the purpose of showing the chain of title, and that there was not at the date of the charter any previous conflicting British claim still in existence.

For the same reason, the allusions made in the report to the boundaries of that grant, as applicable to the chartered limits of Massachusetts, are wholly irrelevant.

It is remarkable that the charter of Massachusetts should have been quoted in the report in detached paragraphs, and omitting the only portion which relates to its northern and eastern boundaries, but in lieu thereof alluding to the boundaries of the grant to the Duke of York. The passages of the report in which the charter is quoted will be found in the extracts appended to these observations.

“ Now, it appears to me, that the claim of Massachusetts’ Bay would have been more clearly exhibited, by quoting together all that part of the charter which related to boundaries, and that the inferences of the commissioners might have been more correct and appropriate, had they adverted to, instead of omitting the only part of the charter which shows, what were the intended northern and eastern boundaries of the territories east of the Kennebec annexed to the Colony. Referring to the Introduction to this argument for the clauses at large, that now alluded to is as follows :

“ That no grant or grants of any lands *lying or extending from the River of Sagadahock to the Gulf of St. Lawrence and Canada Rivers and to the main sea northward and eastward*, to be made or passed by the Governor and General Assembly of our said Province, be of any force, validity, or effect, until we, our heirs and successors, shall have signified our or their approbation of the same.”

The words in italic are no where quoted in the report, though the reservation of the Crown to approve the grants is quoted (page 18;) and the term “Sagadahock” is substituted for the descriptive words in the charter: which substitution may refer the reader to the defunct grant to the Duke of York, and to its boundaries as quoted before in the report, (page 14). All the inferences and suggestions in the report, therefore, which may have been deduced from the terms of that Grant from any other source than the terms of the charter fall to the ground; and the argument resolves itself into this.

The territories annexed by the charter to Massachusetts’ Bay were, Acadia or Nova Scotia and the tract of land lying between it and the Province of Main: (or in other words, to the River Sagadahock or Kennebec, which by the charter was the eastern boundary of Main:) the boundaries of both Nova Scotia and the said tract of land, were

northward and eastward to the Gulf of St. Lawrence and Canada Rivers, and to the main sea. If it could be proved, therefore, that the boundary between Nova Scotia and the said tract lying west of it, and still claimed by Massachusetts, was at the date of the charter a north-west line striking the River St. Lawrence, at or near Quebec, it would follow that, after the acknowledged separation of Nova Scotia from Massachusetts' Bay, this Colony did not extend to the River St. Lawrence, and the whole or greatest portion of the now disputed territory was without its boundaries. This is, in fact, what the commissioners contend for. On that they principally rely and announce some important discoveries made by them, concerning the grant of Nova Scotia, to Sir William Alexander in 1621. It is undoubtedly true that the boundaries of Nova Scotia were not described in any other public act of Great Britain at the date of the charter; though it cannot be conceded that this was equally true at the date of the Treaty of 1783. The case, as stated in the report, will be found in the appended extracts.

It will there be seen that the object of the commissioners is to prove, that the line described in the grant, as one drawn from the western source of the St. Croix towards the north to the nearest roadsted, river or spring emptying itself into the great River de Canada; (whence the boundary proceeds eastwardly along the sea-shores of the said river) means a north-west line, and at the same time a line to the source of the River Chandiere, and then down that river to its mouth to Quebec. The extract from the report hereto appended must be compared with No. XIV, of the recapitulation of the report hereinafter quoted. With respect to a line drawn from the western source of the St. Croix to the nearest source of the Chandiere, it would be a line towards the west and not towards the north.

It will also be seen by the extract, that the great discovery, by which the theory of a north-west line exclusively of any other is sustained, consists in the insertion in the text of a comma, before the words *towards the north*, where first mentioned in the grant.

In the authentic Latin copy of the grant, communicated by the British Government, there are no commas. The copy is transcribed from the report as published by order of Parliament; and a comma is there inserted after the words *versus Septentrionem* where first mentioned; which makes the passage read as it has heretofore always been read. It must have been so placed by the compositor of the Parliamentary Press. The commissioners clearly intended that the comma should be placed before and not after *versus Septentrionem*, and it must be so understood by the reader.

Whether this emendation, which is the great discovery of the commissioners, be admissible, is left to the decision of critical scholars.

My business is with the reasoning of the report; and the reason assigned for the emendation is not sufficient. (e)

The word *north*, applied to the latitude of any country, known to be situated north of the equator, though superfluous, is perpetually used, and it is thus used several times in the Treaty (to the forty-fifth degree of north latitude.) Every body knows that the latitude, whether north or south, is always counted from the equator. The words *ab equinoctiali linea*, in the grant, are equally superfluous, and they correspond with the words in the Treaty, "in latitude of thirty-one degrees north of the equator."

The object of the emendation cannot have been to connect the words *versus Septentrionem* with the words *ad occidentem* of the next sentence. For if the union of the two was necessary in order to express the north-west, it would follow that *versus Septentrionem* alone was not sufficient for that purpose. But the true object of the emendation was to detach those words from the first sentence, where, being applied to latitude from the Equator, they must necessarily mean due north. And the commissioners call the tracing on maps of a due north line from the source of the St. Croix to the St. Lawrence, an erroneous construction of the expression *towards the north*.

But those words mean a line which inclines more to the north than to the east, or the west, and they necessarily embrace a due north line. Under the broadest legitimate construction, it cannot vary more than from due north-east to due north-west. The American translation quoted in the preceding passage of the report is undoubtedly incorrect in substituting the word *North* for *towards the North*: *first*, instead of *nearest* is also wrong, though in fact it has the same meaning; but Bay, as a translation of *navium Statio* is admissible, since Bay of Fundy, with the adjunct *great*, and St. Mary's Bay, are both designated in the Grant as *navium Stationes*. I coincide, however, in the opinion of the commissioners that *roadsted* (or road) is the best equivalent. "Naval Station," in the literal translation of the report, has not in English any definite meaning, and would apply to vessels blockading or watching the entrance of a port with as much propriety as to a bay or road.

But the scrupulous literal translators should not have rendered the words, *per maris oras littorales*, by the words "by the gulf shores" instead of "sea shores." The reason for that alteration seems to have been, that the words *sea shores*, as designating the place where the line running towards the north must strike the St. Lawrence, seemed to exclude Quebec and the upper part of the river.

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(e) The reason assigned, is that the words "*versus Septentrionem*," if connected with what precedes, are superfluous. But the reader must refer to the appended extracts from the Report.



In order to show how the western boundary of the Grant to Sir William Alexander was understood, the commissioners, instead of seeking for ancient English maps, have appealed to a Venetian map by Coronelli, dated 1689; at which time, as they say, the nature of the Grant must have been well understood. How it was understood by Coronelli will appear by looking at his map, in which he has placed the whole of Nova Scotia west, instead of east of the River St. Croix. The country east of it, or the present province of New Brunswick he calls Etechemins: he transposes the Penobscot and the Kennebec and confines Acadia to the peninsula. The commissioners have given two copies of the map, in one of which there is a coloured line from the source of the St. Croix to Bay des Chaleurs. Which of the two is the genuine transcript I cannot say.

It is further stated in the report that the above quoted American translation is an official one, being appended to a document communicated by the President of the United States in January, 1838, to the House of Representatives. And the Commissioners in their recapitulation say:

“XVI. It appears that in the discussions which have been hitherto had on the subject of the Grant of Nova Scotia in 1621, reference has always been had to an American translation of that Grant which was defective; and that all the omissions and inaccuracies in that defective translation singularly concur to obscure the nature of the claim which Her Majesty's Government is interested to maintain.”

The only Agents ever employed by the Government of the United States, in the discussions with that of Great Britain, concerning the north-eastern boundary, have been Mr. Bradley, under the Ghent Commission, and Albert Gallatin and William P. Preble, to prepare the Statements of the case laid before the King of the Netherlands.

A passage already mentioned in page 15 of the first of those Statements has been quoted in the report of the commissioners (page 15.) Had those gentlemen only turned the leaf of the American Statement, they would have seen (page 12) the translation of the Grant used by the two last mentioned American Agents, viz:

“Beginning at Cape Sable, in 43° north latitude, or thereabout, extending thence westwardly along the Sea shore, to the road commonly called St. Mary's Bay; thence *towards the north* by a direct line crossing the entrance or mouth of that *great ship road*, which runs into the eastern tract of land between the territories of the Souriquois and of the Etchemins, (Bay of Fundy) to the river commonly called St. Croix, and to the most remote spring or source, which, from the western part thereof, first mingles itself with the river aforesaid; from thence, by an imaginary direct line, which may be conceived to stretch through the land, or to run *towards the north*, to the *nearest road, river or spring*

emptying itself into the great river de Canada; (River St. Lawrence;) and from thence proceeding eastwardly along the Sea shores of the said river de Canada, to the river, road, port, or shore, commonly known and called by the name of Gachepe or Gaspé.

Mr. Bradley, in his opening argument, which is quoted in page 43 of the Report of Messrs. Featherstonhaugh and Mudge, presented to the commissioners appointed under the fifth article of the Treaty of Ghent, an extract of the Latin text of the Grant to Sir William Alexander, together with the following translation, which has also escaped the notice of Messrs F. and M.

"By the tenor of this our present charter, we do give, grant, and convey to the said Sir William Alexander, his heirs or assigns, all and singular the lands of the continent and Islands situated and lying in America within the head lands or promontory commonly called Cape Sable, lying near the latitude of forty-three degrees or thereabout from the equinoctial line, *towards the north*, from which promontory stretching towards the shore of the sea to the west to the *road of ships* commonly called St. Mary's Bay, and then *towards the north* by a direct line crossing the entrance or mouth of that *great road of ships* which runs into the eastern tract of land between the territories of the Souriquois and the Etchemius to the river commonly called by the name of St. Croix, and to the most remote spring or fountain from the western part thereof, which first mingles itself with the river aforesaid, whence by an imaginary direct line which may be conceived to go through or run *towards the north* to the *nearest road of ships*, river or spring emptying itself into the great river of Canada—and from thence proceeding towards the east by the shores of the sea of the said river of Canada to the river road of ships or shore commonly known and called by the name Gachepe or Gaspé."

It is believed that the translations used in the only discussions which have taken place between the two Governments on the merits of the case will appear to have been free from the objections raised in the report. The grant was mentioned on the part of the United States to show the chain of title, and the origin of the designation of a certain territory by the name of Nova Scotia. It has also been used in order to show that, from the time when it was first mentioned in a British public act, the River St. Croix was designated as having its mouth in the Bay of Fundy.

In their recapitulation, the commissioners attach great importance to what they call their discovery. They say:

"XIV. We have discovered by a critical examination of the Grant of Nova Scotia 1621, in the original Latin, that the passage which describes the western boundary of the territory included in that grant, and

which boundary was agreed, at the time of the treaty of 1783, to be the eastern boundary of Massachusetts in conformity with the provision contained in the charter of Massachusetts of 1691, is susceptible of a new interpretation, varying in important particulars from the received one: and we show by a literal translation of the Latin, that the boundary was intended to run *from the most western waters of the St. Croix to the sources of the Chandiere*; a line, which it has been seen, coincides in a very striking manner with the boundary in the Sieur de Monts' grant of 1603."

Now, so far as relates to any originality in the argument of the commissioners and in the conclusions they draw from their discovery; it appears to me that the whole is comprehended in the following passage of the second statement laid before the King of the Netherlands on the part of Great Britain.

"Sir William Alexander's grant, which was not in the recollection either of Mr. Adams or Mr. Jay, when they were examined on oath as witnesses under the St. Croix commission, and which, in former discussions respecting boundary under the treaty of 1783, the United States agents have vehemently rejected, carries the western boundary of Nova Scotia up to the westernmost source of St. Croix River, and thence to the River St. Lawrence by a line extending towards the north, and joining the nearest spring or head stream emptying into that river. According to the same grant, the northern boundary of Nova Scotia was to pass along the southern coast of the River St. Lawrence to Cape Rosiers."

"The terms of the Grant would not bear us out in supposing that the western Boundary of Nova Scotia was to be formed by a due north line. The only positive circumstances to be collected from them as guides for our opinion, are, that the Line between the two sources specified therein shall be a straight one, and that the source communicating with the St. Lawrence shall be the nearest. On looking to the map, we instantly perceive that these guides might lead us to head waters of the River Chandiere, as being the nearest to the point of departure of all the sources north of it falling into the St. Lawrence. But, without presuming to intimate that such was the real intention of the Grant, (f) dating, as it does, from a period when the face of the country was wholly unknown, we feel ourselves justified in pointing out the vagueness of its terms, as fairly acknowledged in the American Statement, and inferring how extremely difficult, or rather impossible, it would have been for the Negotiators of the Treaty to have fixed the Boundaries between two

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(f) The respectable author of that Statement, sensible that such a line would be towards the west and not towards the north, could not insist on that construction.

Independent States, in conformity with definitions so loosely worded as to involve the most unexpected contingencies."

"A line extending from the source of the St. Croix "towards the north" to the nearest part of the St. Lawrence would, at all events, strike that river, owing to the obliquity of its course, far to the west of that point where a due north line would intersect it. A reference to the map will make this clear. It must not be forgotten that the Commissioners under the 5th Article of the Treaty of 1794, in deciding which was the true St. Croix, adopted the northern stream, to the exclusion of the western. Thus the variations of this one Grant alone offer four several north-west angles of Nova Scotia. The western stream being the one named in Sir William Alexander's Grant, the preference of the northern stream must surely invalidate the authority of the Grant as a binding designation of the boundary of Nova Scotia; and at any period subsequent to the Proclamation of 1763, Sir William Alexander's Grant is altogether irrelevant as to the northern boundary of that province."

If I am not much mistaken, the only original discovery of the report on that subject consists of the insertion of the Comma. But, admitting that the Crown had the right to determine the course of the line from the source of the St. Croix to the St. Lawrence, it had never been done or suggested prior to the year 1763. On the contrary, in the only map that had an official character, (the map of Mitchell of 1755 sanctioned by the Board of Trade,) the line is made to run due north, and that not for the purpose of simply going farther north than the sources of the Penobscot; for the line is extended to the banks of the St. Lawrence. At last, in 1763, the line was expressly prescribed by the public Acts of Great Britain to be a due north line; and thus matters stood at the date of the Treaty of 1793.

It was deemed important on the part of the United States to prove the identity of the boundary line prescribed by the Treaty of 1783, with that which had been designated by the proclamation of 1763, and the other previous public acts of Great Britain: and it was of course necessary for them to demonstrate the identity of both with that which they claimed under the treaty. The third and fourth sections of the first American Statement of the case, laid before the King of the Netherlands, were devoted to that double object. In the second section, the greater part of which has been transferred to the introduction of the preceding essay, the chain of titles and the claim of Massachusetts, as it stood in 1782, were examined. Always admitting that the boundaries, whether containing more or less than that claim, were definitively settled by the Treaty of 1783; it has been urged that the boundaries of Massachusetts, as described in the Charter and rendered definite in 1763 by the proclamation and other public Acts of Great Britain, were discussed at large in

the course of the Negotiations of 1762, and had a considerable influence on the final agreement with respect to that portion of the boundary.

It is not intended to pursue the critical examination of all the other irrelevant or unimportant parts of the report, and to enter further into minutiae, which divert the attention from the true questions at issue between the two governments. Notice will only be taken of that which appears new, or has not already been refuted in the preceding pages.

It had been heretofore contended on the part of Great Britain, that the boundary described in the Treaty of 1763, was identic with, and suggested by the height of land mentioned by Pownall, as that in which the Kennebec, the Penobscot, and the St. Croix had their sources. The same assertion is repeated in the report, and the same reasons assigned for it. But the former agents of the British Government had denied the identity of the treaty boundary with that designated by the Proclamation of 1763. That identity is now admitted in the report: and a curious and novel inference is drawn, viz: that the description of the southern boundary of the Province of Quebec in the Royal Proclamation of 1763, was derived from the information in the map published by Evans in 1755, although the eastern portion of that map, as re-published by Pownall in 1776, belongs to him and not to Evans; and that the descriptions contained in the Proclamation of 1763 are a mere *echo* of the information produced by the explorations of Governor Pownall; which information was for the first time published, together with his map, in the year 1776 by Governor Pownall. This anticipating *echo* is all that belongs exclusively to the report.

A double transcript of Mitchell's Map is appended to the report; one of which is called Mitchell's Map, but accurately adjusted for latitude and longitude: in other words, it is a new map entirely differing from that of Mitchell. The western source of the St. John was known to Mitchell, and was found on his map: he had no knowledge of the source of the south branch of that river, and accordingly it is omitted on his map. In the transcript adjusted for latitude and longitude, the alteration consists simply in having converted Mitchell's western into the southern branch of the St. John. The result is simply, that a line drawn from the extremity of Bay Chaleurs, to the westernmost source of the St. John passes north, and that if drawn to its most southern source, it passes south of the River St. John. This might have been shown by looking at any modern map of the country. I do not understand what inference can be drawn from that fact, nor why in order to prove it, it was necessary to alter Mitchell's Map. But when the commissioners who appealed to Coronelli in order to prove the extent of geographical knowledge in 1689, repudiate Mitchell's Map, they forget that this has been adduced for the purpose of showing the knowledge which the negotiators who had that map before

them, during the whole course of their negotiations, had of the topography of the country.

The assertion that although the north-west angle of Nova Scotia, placed at the source of the River St. John in the rejected article first proposed by the American Negotiators, was by the Treaty removed 120 miles west of that source, yet, the Highlands contemplated in the rejected article and those described in the Treaty are the same, is again re-asserted in the report without assigning any new reasons for it. The same may be affirmed of all that relates to the Negotiations of 1782, to the opinions expressed by Mr. Sullivan, Mr. Mauduit, and others, and to all the residue of the first part of the report; with the exception of the proposal to annul a decision made in conformity with a solemn treaty.

There is, however, a point which the authors of both the British Statements and the late Report have very naturally misunderstood, inasmuch as sufficient evidence had not been adduced in that respect on the part of the United States. The contract of the State of Massachusetts in the year 1792 with Jackson and Flint, had been deemed sufficient to show in what manner the Treaty was understood by the State: and the survey of the land which was on file in the Surveyor General's Office was not produced. It was inferred on the part of Great Britain, from an erroneous delineation in Greenleaf's map of Maine, that the Grant did not extend beyond the sources of the Penobscot.

The plan of the survey may at any time hereafter be produced by the United States. It was executed in the years 1793 and 1794, and contains 2,943,133 acres. Its eastern boundary extends from the Scoodiac Lakes, one hundred and fifty-two miles magnetic north, crossing the St. John above its junction with the Madawaska, and extending about fifteen miles beyond it. There the surveyors, having mistaken tributary streams of the Madawaska for rivers emptying into the St. Lawrence, turned to the west along highlands which, owing to that mistake, they supposed to be the highlands of the Treaty. The western boundary of the tract is, from its northern extremity to the sources of the Penobscot, for 83 miles parallel to the eastern boundary, crossing the St. John, the Aliguash, and the Restook near its source. Farther south that western boundary is parallel to the eastern branch of the Penobscot, and terminates at the Passadumkeg.

A great portion of the second part of the report (page 42 to 52) enters into details which can have no effect whatever on the true construction of the treaty. It is not meant to say that, because the United States do not consider positive elevation and mountainous character as properties imposed by the Treaty on the highlands dividing certain rivers, Great Britain has not the right to ascertain all the facts in that respect, and from the ascertained facts to draw every legitimate inferences she may

deem proper. But the portion of the report alluded to does not in that respect show any thing else than that the American line, at least, was but very partially examined by the Surveyors appointed under the treaty of Ghent, and has not to this day been properly surveyed. The height of the spot claimed by the United States, as the north east angle of their boundary, had been deduced from the estimates of Mr. Bouchette, the principal British Surveyor; and since these have been found to be erroneous, it is probable that the height of that spot may not much exceed the estimate in the Report. All this, however, of no importance in the view of the subject taken by the United States, remains uncertain; and the facts will be ascertained by the Surveys which have now been undertaken on their part.

The report dwells on some controversies which took place under the Ghent Commission, respecting certain conjectural maps, and on the opinions and acts of the American Commissioner and Agent, which most certainly cannot affect any question at issue.

The conjectures of the Surveyors who made the first explorations must have been in many respects erroneous; and, during the preliminary proceeding of the Ghent Commission, the Agent of the United States may have believed that those conjectures would be corroborated by further investigation. But, from the time when the treaty was concluded, and before the nature of the ground, along which the line claimed by the United States does extend, had at all been explored, the same boundary has at all times been claimed by them, for the simple reason that, according to the Treaty, it is traced by nature, is immoveable, and does not in the slightest degree depend on the nature of the ground. It is true that, if, at the same time, that ground had been found to correspond with the character arbitrarily required of it on the part of Great Britain, the objection itself could not have been made: and Surveyors on both sides, then and now, may have been anxious to find the facts to correspond with their wishes. But from the moment when the discussion took place, from his very first opening argument, the Agent of the United States was too wise to rely on such frail foundation, and rested the claim of the United States on its true and inexpugnable principle, the division of the rivers specified by the Treaty. From that principle, neither he, nor the Commissioner of the United States, nor their agents at a subsequent time, nor the State of Maine in its legislative reports, nor the committees of Congress which have taken cognizance of the subject, have ever departed. It has been quite otherwise, on the part of those who, divesting the highlands of the express and indispensable property of dividing certain rivers, have substituted for those Highlands, arbitrary lines, chains of mountains and imaginative axis of elevation, all which have the singular advantage of being moveable at will. The

principle on which the right of the United States does rest is so clear and so obvious, that all those, who have been engaged on their part, have used the same fundamental arguments. I am bound to say that, when employed as one of those agents, I found all those arguments already stated by Mr. Bradley, the agent, and, in his opinion of the case, by Mr. Van Ness, the commissioner of the United States under the Ghent commission ; and that, jointly with my associate, Mr. Preble, we were able to add but little, and that principally for the purpose of refuting, perhaps at greater length than the occasion required, the various and varying objections raised by the British agents.

The commissioner on the part of the United States was of opinion that, with respect to two conflicting and partly conjectural maps, both should be either admitted or rejected. The British Commissioner wanted the British map to be admitted and the American map to be rejected. The proposal to examine the surveyors under oath was very properly dismissed ; it could have added nothing to what was already known. Neither Mr. Odell or Mr. Johnson could or would have sworn a single iota beyond the facts, viz : that, from certain spots they had taken views of the surrounding country, and that they did believe that, as far as could be ascertained from such data, their plans exhibited a correct view of the ground.

It is said, that one of those conjectural maps had, on the part of the United States, been accidentally put on the files of the proceedings of the Board. It will not be asserted that, either Mr. Commissioner Van Ness, or the agents who prepared the statements laid before the King of the Netherlands, rested in any degree their respective opinion and arguments on that map. But I will add, that there was in fact on the files of the Board a map of the same character, on the part of Great Britain. That map unites Mr. Odell's survey of the Restook and the sketch of the country as viewed from Mars Hill and Houkton plantation, with Mr. Campbell's sketch of his height of land.

A reduced map of this will be found on the same plate with the map reduced from that of the late British Commissioners. And that map is introduced, in order to show the extent of the discoveries of the Commissioners. They have the merit of having ascended the Restook higher than Mr. Odell, and of having penetrated to the sources of that river, thence to those of the Aliguash and of the Penobscot, near which they met the eastern extremity of the ridge explored by Mr. Campbell, and thence to the sources of the western branch of the St. John and of the Etchemin. They are entitled exclusively to the credit of having ascertained the actual elevation of various spots in the vicinity of their line of exploration. But they cannot claim to have discovered a new line of Highlands : they have only ascertained with precision the elevation



and nature of the ground, erroneously claimed by Great Britain as the treaty boundary; but the position of the Highlands thus claimed had been discovered, and was fully indicated by the former explorations of the two British surveyors, Mr. Odell and Mr. Campbell.

I pass with pleasure to the appendix of the report which presents a most striking contrast with the report itself. This appendix is a plain statement, written with equal simplicity and perspicuity of the instruments used, of all the precautions taken in order to secure a true result, of the barometric observations, of the line of exploration and of the difficulties which the commissioners had to encounter. It is astonishing that they should have performed so much and so well in so short a time. I am sure that all the observations were made conscientiously and with all the skill which may be expected from the present state of science; and I place entire confidence in the estimate of all the elevations deduced from those observations on which they rely themselves. No astronomical observations are mentioned; nor is any statement given either of the data by which the distances and courses were estimated, nor of the elements on which the section of the line between the points actually observed is founded.

The United States attach no importance to those facts; but if they are deemed of any importance, it seems to me that all the surveys on both lines ought to be made jointly and not separately. The object is that all the facts thought important by either party, and which may be ascertained, should be so ascertained as that there should be thereafter no discussion about those facts, and that, whether in a direct negotiation between the parties, or still more so if the subject should be submitted to an arbiter, that discussion should be confined exclusively to the inferences which may be drawn from facts mutually agreed on.

The first and latter portions of the second part of the report (pages 37 to 42 and 51 to 57) are a commentary on the appendix: I might indeed say that the appendix is the report, and that what is called the report is the commentary.

In this, the commissioners generalize much beyond the limits of their exploration, and state their theory. Without a knowledge of the information on which they relied for that which did not fall under their own observation, it can neither be admitted or denied.

They admit that there are various lines of what have once been continuous ridges, leaving only peaks at great distances from each other: they speak of one within the acknowledged boundaries of the United States extending from the Bald Mountains to the Katahdin, and which they say is connected with Mars Hill. Many others might probably be found in a country, which from the White Hills, the highest elevation east of the Rocky Mountains, to Bay Chaleurs and Cape Rosiers, is

traversed by various groups of mountains without any apparent regularity. But, according to the theory, there are but two that should be taken into consideration.

The commissioners say that the Green Mountains, which run from south to north between the River Hudson and the Connecticut, divide themselves into two branches on reaching the 44th degree of north latitude; that the southern branch holding its course north-easterly separates the head streams of the River Chandiere from those of the Connecticut, of the Kennebec, and of the western branches of the Penobscot; that this is the ridge described by Pownall, and designated in the proclamation of 1763; that further to the east, its continuity becomes more interrupted, but that though with less elevation it still continues to form a part of what they call the axis of maximum elevation; and that, from Nictor Lake situated about fifty-six miles from Bay Chaleurs, the same continued ridge again rises in its direction towards that bay to the height of two thousand feet. And they conclude by saying:

“We therefore present this axis of maximum elevation of the whole country as the true Highlands intended by the 2nd. article of the treaty of 1783, uniting to the character of “Highlands,” as contradistinguished from lowlands, the condition required by the treaty, of dividing the “rivers that empty themselves into the St. Lawrence from those which flow into the Atlantic Ocean, to the north-westernmost head of Connecticut River.”

Those true highlands which, it is asserted, divide the rivers that empty themselves into the St. Lawrence from those which flow into the Atlantic Ocean, do not, for more than two hundred miles in a straight line, divide the tributary streams of the St. Lawrence from any river whatever: the sources of those tributary streams do not from the source of the Chandiere, for the whole of that distance touch those true dividing highlands in their north-eastwardly course, and do not approach them nearer than one hundred miles for a considerable portion of the line of those highlands: and those true highlands, which fulfil the conditions required by the Treaty, of dividing the waters of the River St. Lawrence from the Atlantic Rivers, do not divide, intersect, or touch any other rivers than the St. John, and the tributary streams of that river, or of those which fall into the Bay Chaleurs: to which must be added, that according to the British construction of the Treaty, neither the St. John, nor the rivers that empty themselves into the Bay Chaleurs, fall into the Atlantic Ocean; so that those true dividing highlands fulfil the conditions imposed on them by the Treaty, by dividing, intersecting, or touching no other rivers but such as fall neither into the River St. Lawrence, nor, according to the British pretensions, with the exception of some branches of the Penobscot, into the Atlantic Ocean.

"To this assertion of the commissioners it is not intended here to object. It is only, and without adducing any proof in support of it, the repetition of that which has been asserted on the part of Great Britain. It has already been stated at the beginning of these observations, that the commissioners did not pretend to argue any of the great questions at issue, but took for granted, that all the assertions, however extraordinary they might be, which had been made on the part of Great Britain, had already been also demonstrated.

It may, however, be observed, that the commissioners have contrived, which was really difficult, to make the British claim still more untenable than as before contended for. Their line differs but little from that traced in 1827 on the Map A, by the British Plenipotentiaries, as that claimed as her boundary on the part of Great Britain. It commences on the due north line, a few miles north of Mars Hill, and, without regarding the division of the sources of the tributaries of the St. John, from those of the various branches of the Penobscot, it intersects obliquely the line heretofore contended for, and meets it several miles south of the Metjarmette Portage, which actually divides a source of the Penobscot from the source of a tributary of the Chandiere. This last alteration was made from love for mountains, and aversion for flat grounds destitute of conspicuous elevations. In so doing, the commissioners have included within their line even some of the head waters of the Penobscot; and they have repudiated several miles of the highlands acknowledged by both parties, and which actually divide the waters of the St. Lawrence from those of the Penobscot.

According to the theory, the northern branch of the Green Mountains leaves the southern branch or axis of elevation just described in about forty-four degrees north latitude, and pursuing a more northerly course passes to the north of Lake St. Francis, and crosses the Chandiere; whence it may be said, by its occasional peaks, to hold a course nearly parallel to the River St. Lawrence until it reaches the District of Gaspe. This branch, whether imaginative or real, is described by the commissioners, less as a continuous chain, than as being traced by isolated peaks separated by wide intervals of marshy tabular lands. But they say, which may be perfectly true, that the sources of several tributaries of the St. Lawrence, particularly the Chandiere, the Rimousky and the Metis, have their sources many miles east or south-east of the peaks which form a part of that apparent continuous chain. Whence they conclude that it is superfluous to add, that "the American highlands are deficient in the character required by the Treaty, viz: of dividing the St. Lawrence from the Atlantic Rivers."

But this is not all. That northern branch of mountains, taking a course a little east of north, leaves the north-westernmost head of Con-

necticut River from forty to fifty miles to the south ; a circumstance of itself conclusive. "For the simple fact of that ridge having no connection with the highlands where the Connecticut River takes its rise, and of its passing at a distance of from forty to fifty miles north from the source of that river, deprives the said northern branch of mountains of all reasonable pretension to be the highlands intended by the Treaty of 1783." All which may be very true, as applied to the northern branch, whether theoretical or real thus described in the report.

But the commissioners in their recapitulation (XIX.) say ; "we have shown that the line of highlands claimed by the United States, to be the highlands of the Treaty of 1783, &c., passes at least fifty miles to the north of the north-westernmost head of Connecticut River, and therefore could not by any reasoning be shown to be the 'highlands' of the Treaty of 1783 ; those highlands being required by that Treaty to go to the north-westernmost head of Connecticut River."

That is to say : that the commissioners having discovered, or thinking that they have discovered a branch or chain of mountains, parallel to the River St. Lawrence, which, as they say themselves, intersects several tributary streams of that river, do declare by their own will and authority that, that north branch or chain is the "highlands" claimed by the United States. In vain have the United States repeatedly declared, that they were bound by the terms of the Treaty, that their boundary was the ground which actually divided the sources of the tributary streams of the St. Lawrence, from those of the St. John and other Atlantic Rivers ; that they could not take the latitude of construction assumed by the British Agents, and claim as part of their boundary any mountains or peaks which were not on the dividing ground. The commissioners insist that their own northern branch or chain of mountains, which is not and never has been claimed by the United States as their boundary, is their boundary. And in as much as the said real or fictitious northern chain does not fulfil the conditions of the Treaty, and passes fifty miles north of the sources of the Connecticut, they conclude that the line actually claimed by the United States, is fifty miles distant from the head waters of the Connecticut, and does not fulfil the conditions of the Treaty. The assertion is so ludicrous that we forget its audacity.

In the course of that extraordinary part of the report, this passage occurs : "in point of fact, no rivers are divided in their course, at any point of the country, along the line thus claimed by the Americans, as carrying out the intentions of the Treaty." If by the words *thus claimed* the northern branch of mountains of the commissioners is meant, there is nothing further to be said about it. But, if because the tributaries of the St. Lawrence and those of the St. John are so situated,

that they often run parallel to each other, so that the source of the stream that falls into the St. Lawrence, lies south of the source of the corresponding tributary stream of the St. John ; if because, in the language of the country, those respective tributary streams interlock, it is meant to say, that the dividing line is impossible ; I would answer that the United States do not claim for their boundary in that quarter a straight line, but the boundary as Nature has made it, and with all its sinuosities. This construction is not, however, ascribed to the commissioners ; though it would only lead to the annihilation of the ground which divides the rivers ; and this does not differ much from the assertion, that the Treaty does not require those rivers to be divided, which it has declared must be divided.

There is a circumstance which seems to have embarrassed the commissioners. Facts are generally very annoying to theorists ; but they are very apt, instead of correcting their theory according to the facts, to adapt the facts to the preconceived theory ; and I do not know why the commissioners should have been arrested by that circumstance. Their axis of maximum elevation is broken in the middle by the River St. John. Thence to the sources of the Restook they found a number of elevations, one of which only reaches 1000 feet, and the other vary from 625 to 880. And east of the St. John, for a considerable distance between it and the vicinity of Nictor Lake, the average elevation seems to have been below 1000 feet. There, mountains are found exceeding 2000 feet ; and in the vicinity of the sources of the south branch of the St. John, we find again the same elevation. The portion of the chasm lying east of the St. John does not seem to have troubled much the commissioners ; and the United States care about neither. But before proceeding any farther, an observation intrudes itself, which, though unimportant in the view taken by them of the subject, may have its effect on others.

The average elevation of the British line between the due north line and the sources of the Aliguash is under 1000 feet. The commissioners, in passing over the portage between the head of the Metawaquem or west branch of the St. John and the River Etchemin, a tributary of the St. Lawrence, did not take the elevation of that portage which is on the boundary claimed by the United States. But they found the height at the forks of the St. John and Metawaquem to be 929 feet, and that of Lake Etchemin to be 943 feet. And as the portage or dividing ground between those two points must necessarily be more elevated than the rivers, the sources of which it divides, that elevation is greater than that of the British line east of the sources of the Aliguash. Since therefore the commissioners do reject that portage as not fulfilling the conditions of the treaty, it is clear that it is thus rejected, not on account of its want-

ing the requisite positive elevation, but solely because it is a table land destitute in its vicinity of peaks or apparent mountains.

Now it cannot be denied, that the word "Highlands," even used alone and separated from its inseparable adjunct in the treaty, means nothing more or less than lands which are high, or which have a sufficient relative elevation ; that it does not imply a mountainous character in the sense attached to that word by the British agents, and that if the Negotiators had intended to impose on the boundary such a character, they would instead of the word "Highlands," have used that of "Mountains," or some other analogous expression.

To return to the axis of elevation ; the commissioners complain that if the due north line does meet their axis in the worst part of its break, it is because that line was drawn from the source of the Chepunicook or northern branch of the Scoodiac, instead of being run from the westernmost source of that river. And they say that if this should be ultimately assented to, it will lose to Great Britain more than 1,000,000 of acres of land. But it is not so much the loss of the land which they regret, as that the line, if drawn from the westernmost source of the Scoodiac, would have struck the Highlands claimed by Great Britain, at a point perhaps three or four hundred feet higher, and having more the appearance of a peak, than that actually intersected by the existing due north line.

And for that miserable reason, on account of a fact which does not in any way affect the merits of any question at issue between the two nations, solely because under the influence of their Mountain Monomania, those gentlemen deliberately advise the British Government, to break a solemn decision made in perfect conformity with the provisions of the treaty of 1794, never objected to on the part of Great Britain, and acquiesced in for more than forty years.

On so serious a subject, I will not permit myself to make any comments. I can but express my deep regret that such suggestion should be found in a document laid before the Parliament of Great Britain, and refer the reader to the appended extracts of the report, for the reasons adduced in support of that most extraordinary proposal. But I am bound to reinstate the facts, and to do justice to the memory of a respectable and distinguished citizen, who displayed on that occasion a most honorable impartiality.

By the treaty of 1794, the question, what river was truly intended under the name of the River St. Croix, was referred to the final decision of three commissioners, one to be named by each of the contracting powers respectively, and the third by the two first commissioners : and if they could not agree, each was to propose one person, and of the two names so proposed, one should be chosen by lot. The said commis-

sioners were authorized to decide what river, from its mouth to its source, was the River St. Croix intended by the treaty. The article concludes in the following words : "and both parties agree to consider such decision as final and conclusive, so as that the same shall never thereafter be called into question, or made the subject of dispute or difference between them." It was originally provided by that article, that the commissioners should particularize the latitude and longitude of the source of the River St. Croix. By the explanatory article between the two Powers of 15th March, 1793, they were released from that obligation, and left at liberty to describe the said river in such other manner as they might judge expedient, which description should be considered as a complete execution of the duty required of them : and it was further agreed that a suitable monument should be erected at the place ascertained and described to be the source of the said River St. Croix.

The three commissioners thus appointed, did on the 25th of October, 1798, unanimously agree in deciding that the true River St. Croix was that which has its mouth in Passamaquoddy Bay at a point about one mile northward from the northern part of St. Andrews Island, and (after stating the latitude and longitude of that point and describing the course of the river upwards) its source to be the source of the northward branch of the said river, which said northward branch had the Indian name of Chepunaticook. A stake, properly marked, placed at that source, and a map annexed, are referred to in the decision. A monument has since been erected at the said source : and the River St. Croix thus described is that generally known by its Indian name, *Scoodiac*.

The main subject of contention was, which was the River St. Croix contemplated by the treaty. The British agent demonstrated beyond contradiction that Boone Island, situated a few miles above the mouth of the *Scoodiac*, was the Island of St. Croix, so called by De Monts, and on which he had a temporary settlement in 1604—1605, and the same which, after its having been abandoned, was visited in 1607 by Lascarbot ; and also that the River *Scoodiac*, particularly described by Champlain who accompanied De Monts, was the same river first called by Champlain *Etchemin River* (g) and afterwards St. Croix. The American agent contended that the St. Croix of the treaty was the *Magaguadavic*, another large river which has also its mouth in Passamaquoddy Bay east of the *Scoodiac* ; first, because, of the two rivers delineated in Mitchell's Map which have their mouths in Passamaquoddy Bay, the easternmost is that

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(g) There are two rivers called *Etchemin* by Champlain ; one is the *Scoodiac* ; and the other, either the *Chandiere* or the stream next to it still called *Etchemin*. The last derived undoubtedly its name from its being the route by which the *Etchemins*, or St. John's Indians, travelled towards the site of Quebec.

which he calls St. Croix ; secondly, because, according to Indian tradition, the Magaguadavic was the St. Croix.

The choice by lot had fallen on an American citizen, and Egbert Benson of New-York was the third commissioner. He decided that the Scoodiac was the River St. Croix contemplated by the treaty ; and the two other commissioners concurred or acquiesced in his opinion. His reasons are detailed at large in a report made by him to the President of the United States. They were in substance, that the River St. Croix contemplated by the treaty was undoubtedly that so called, in the grant to Sir William Alexander, and in all the subsequent acts of Great Britain ; that the River St. Croix intended by the grant of 1621 to Alexander could not possibly have been any other than that mentioned and described by Champlain and Lescarbot, the only authors, who, prior to 1621, had ever mentioned that river ; that Mitchell, in a map made under the auspices of the board of trade, could not have intended any other St. Croix than the river thus recognized by British public acts ; and that his involuntary error in mistaking the eastern for the western river could not affect the terms of the treaty. Although Massachusetts had, ever since 1764, contended for the Magaguadavic as being the true St. Croix, not a voice was raised in America against the decision.

After the main question had been decided, the next which arose was, what was the source of the River St. Croix ; and on that point there were three opinions which have been stated in No. I. of this appendix. The three commissioners, however, acquiesced in that of Mr. Benson, who considered the source of the Scoodiac to be its outlet from Lake Genesaguranguensis, the lowest of those lakes which have each a distinct Indian name, but have been called by the English and the Americans "the Scoodiac Lakes." A decision to that effect was actually prepared by the commissioners, and is on file amongst their official proceedings.

It was then, and not till then, that what is called in the report a compromise took place ; and it had no connection with the decision respecting the true River St. Croix, concerning which Mr. Benson and the British Commissioner had always perfectly agreed. It was then that the American proposed to the British Agent, that they should unite in asking the commissioners, to substitute the Cheputnatecook and its source for the place above stated, in favor of which the commissioners had prepared their decision. This appears from the following extract from the British Agent's application to the Board.

The underwritten agent also begs leave to lay before the Board, an original letter, dated Providence, 23d of October, 1798, from Robert Liston, Esq., at that time his Majesty's Minister Plenipotentiary to the United States, whom his Majesty's Agent at that time thought it his duty to consult, before he could feel himself authorized to assent to the



said proposal of the Agent of the United States at that time, to recommend to the said commissioners under the fifth Article of the said Treaty of 1794, to alter their decision, as aforesaid, respecting the source of the said River St. Croix, which letter was addressed to, and duly received by, the said Agent of his Majesty before the same commissioners, and is in the words and figures following, viz :"

" Providence, 23d October, 1798."

" Private."

" Sir :

" I have considered with attention your letter of this day ; and it appears to me evident that the adoption of the River Cheputnatecook, as a part of the boundary between his Majesty's American Dominions and those of the United States, in preference to a line drawn from the easternmost point of the Scoodiac Lakes, would be attended with considerable advantage. It would give an addition of territory to the Province of New Brunswick, together with a greater extent of navigation on St. John's River ; and above all, a larger stretch of natural frontier, calculated to prevent future difficulties and discussions between the two countries. If, therefore, by assenting to the proposal of the American Agent, you can bring about the unanimous concurrence of the commissioners in this measure, I am of opinion that you will promote his Majesty's real interests ; and I will take the earliest opportunity, with a view to your justification, of expressing these my sentiments on the subject, to his Majesty's Secretary of State."

I have, &c.,

Ward Shipman, Esq.

(Signed) Robert Liston."

It is evident, that if the question between the Scoodiac and the Magaguadavic, so much more important than any of the considerations alluded to by Mr. Liston, had not already been decided, and if, as most erroneously stated in the Report, that decision had depended on, or had in any shape been connected with the subordinate question respecting the true source of the St. Croix, that subject, the question between the Scoodiac and the Magaguadavic, to which Mr. Liston does not even allude, would have been mentioned by him, as the peremptory reason why the proposal respecting the source of the river should be accepted.

The British and American agents were in fact the representatives of their respective governments, and the commissioners were the judges. When those agents acting for their governments agreed on the alteration and jointly applied for it, the commissioners as judges gave it their sanction and decided accordingly.

It will be seen by the map that a due north line, drawn from the out-

let of the Scoodiac Lakes, would have intersected the Chepunatecook Lakes and thrown in the British territories the small tract of land contained between such a north line and the Chepunatecook. There were within that tract several American grants and settlements; and it was in order that the existing state of things should not be disturbed, that the American agent made the proposal. It was gladly accepted by the British agent, because the source of the Chepunatecook was west of the place first agreed to by the commissioners, and that therefore Great Britain would by the alteration gain a much greater territory north of the waters of the St. Croix, and principally because the due north line drawn from the source of the Chepunatecook would cross the River St. John higher up and farther west.

Neither the opinion of the Commissioners of the propriety of the decision, nor mine, are of any importance. But since they have given theirs, I may be permitted to say, that the decision appears to me to have been correct in every respect. The River St. Croix is designated in the Treaty by that name and by that name alone. Having ascertained which was the river thus designated, visited and described by Champlain from its mouth to the head of tide water; and the words *the source* having been substituted in the Treaty, as they had been since 1763 in all the Public British Acts, for the words *westernmost source* of the grant of 1621 to Sir William Alexander; the Commissioners had nothing else to do, than to decide what was the true source of the River St. Croix thus recognized as being from its mouth to the head of tide water, the true River St. Croix contemplated by the Treaty. The names given by the Indians to the several streams or branches of that river were not alluded to in the Treaty, and had nothing to do with the decision. And it will appear by an inspection of the map, that the northern branch, which the Indians thought proper to designate by the name of Cheputnatecook, is of all the branches of the rivers considerably the longest and the straightest, and that therefore its source must be considered as the true source of the whole River. (h)

The substance of the whole argumentative part of the report has now been stated, and it may be seen, supposing all the propositions which it contains to have been proved, whether they can in any degree affect the decision of the true questions at issue. Even supposing the line of Highlands explored by the commissioners to be what they call the axis of maximum elevation of the whole country between the Connecticut and the Gulf of St. Lawrence, this does not prove that that axis, which

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(h) It might have been added that in the dialect of the Passamaquoddy Indians, *Scoodiac* does not mean lowland but burnt land, that it is derived from *scoot* fire and *acki* land.

is for more than one half of its length distant more than one hundred miles from the sources of the tributaries of the River St. Lawrence, and touches those sources only when it reaches the Chaudiere, does actually divide the rivers that empty themselves into the River St. Lawrence from any other rivers whatever. Though it should be proved, that the Highlands claimed by the United States, are less elevated and want the mountainous character ascribed to the British line, this does not prove that such character and a greater elevation are a condition imposed by the treaty on the Highlands therein contemplated. On both those subjects the report is altogether silent; nor does it discuss the question whether the St. John and the Ristigouche are or are not under the treaty Atlantic Rivers. It leaves all the great questions at issue where it found them: indeed it has in one respect placed the British claim on even worse ground than that heretofore relied upon.

The commissioners say that the former British agents were wrong in denying that the line of demarcation established by the ancient provincial boundary, was intimately connected with the boundary intended by the treaty of 1783: and they affirm, expressly, that the boundary description, &c. contained in the Royal Proclamation of 1763, in the Quebec Act of 1774, and in the treaty of 1783, are identical with each other.

I do not know by whom the British statements laid before the King of the Netherlands were prepared: from internal evidence it might be inferred that both were not written by the same person. But whoever may have been the author or authors, those documents are respectable papers, written in good taste, without any attempt to distort or misrepresent the arguments of the other party; and, considered as what they purport to be, viz: pleadings on the part of Great Britain before the arbiter, they appear to me to contain all that could be said on the subject, and to have no other defects but those inherent to the very bad cause which they had to defend. The writers understood thoroughly their case, and saw clearly that, if they admitted that identity of the boundaries described in the Proclamation and in the Treaty, for which the United States contended, the question was given up, and they would lose the only faint hope of success they might entertain.

It is evident that, if the substitution, in the clause of the treaty which relates to the division of rivers, of the words "Atlantic Ocean" in lieu of the word "Sea" used in that clause of the proclamation which describes the southern boundary of the Province of Quebec, has produced such an effect as to exclude in the treaty the Ristigouche and the St. John from the class of rivers intended to be divided, the boundaries described in the two instruments respectively are widely different; and this

is the construction for which the authors of the British statements laid before the King of the Netherlands contended.

It is equally evident that, if the boundaries described in the two instruments are identic, as maintained by the United States and by the late British commissioners, the substitution in the treaty of the words "Atlantic Ocean" in lieu of "Sea," has made no alteration in the boundary, and that those words "Sea" and "Atlantic Ocean," respectively used in the Proclamation and in the treaty, must be taken as synonymous: and in that case, there is no longer room for the objection drawn from the Atlantic Ocean being in another clause of the treaty contradistinguished from Bay Fundy.

Had the report of the commissioners been laid before the King of the Netherlands instead of the two British statements, the award would infallibly have been entirely in favor of the American line.

The British construction of the term "Highlands," and along with it the whole theory of the commissioners were set aside by the award; which declares, "that according to the instances alleged, the term 'Highlands' applies not only to a hilly or elevated country, but also to land which, without being hilly, divides waters flowing in different directions; and that thus the character more or less hilly and elevated country through which are drawn the two lines respectively claimed, at the north, and at the south of the River St. John, cannot form the basis of a choice between them." And I am confident that such also will be the opinion of every man who entertains correct notions of Physical Geography.

In the same manner, not a foot of the line claimed by Great Britain was confirmed by the award; and the whole of it was repudiated by the declaration "that the verb 'to divide' appears to require the contiguity of the objects to be 'divided.'"

It is manifest that the doubts in his mind, which induced the King to propose what appeared to him an equitable division of the disputed territory, arose from the use of the term "Atlantic Ocean" in the clause of the treaty that relates to the division of rivers, combined with the distinction made in another clause between that Ocean and Bay Fundy, &c.; and which he expressed by saying, that "it would be hazardous to include the Rivers St. John and Ristigouche in the class of rivers falling into the Atlantic Ocean."

That objection is removed, whenever the identity between the boundaries respectively established by the Proclamation and the treaty is admitted. No such identity had been admitted in the British statements; and the award declares that "the ancient delimitation of the British Provinces does not afford the basis of a decision." But if, as the United States contend and the commissioners affirm, the identity had been acknowledged by both parties, and the objection respecting the in-

terpretation of the terms of the treaty had been thus removed, the decision would necessarily have been in favor of the American line. For had no doubt existed respecting the *terms of the treaty*, the King, who is an accomplished publicist, would not have resorted to the presumed improbability that Great Britain could have agreed to the boundary claimed by the United States, or to any other *presumed intentions* of the parties, in order "to interpret what had no need of interpretation." The authors of the statements understood the British case better than the late commissioners.

There is a passage in these observations which is not perhaps sufficiently explicit. The British commissioners affirm, "that the height of land described by Evans and Pownall in 1755, extended to the eastern branches of the Penobscot," and "that the description of the southern boundary of the Province of Quebec, and in the Royal Proclamation of 1763, was derived from the information published by Evans, the Highlands there spoken of being identical with the *height of land* laid down in Evans' map."

They clearly quote Evans' map of 1755, without having seen it; though they might have found a reprint of it in Jeffery's Atlas, No. 18. It is entitled "a map of the middle British Colonies in America, viz: Virginia, Maryland, Delaware, Pennsylvania, New Jersey, New-York, Connecticut and Rhode Island." It does not embrace a single foot of the height of land in question, and does not approach it. The Connecticut River is not delineated on it farther north than a few miles north of the 43d degree of latitude, or about 140 miles south of the sources of that river. All north of that latitude (43° 10') and east of the Hudson and of Lake Champlain is a blank on that map; and the name, "height of land" is no where used in it.

But the commissioners had before them Pownall's Map first published in 1776, and they might have read its title, in which New England and the bordering parts of Canada are expressly stated to be an addition to Evans' Map. That portion of Pownall's Map, added by him to that of Evans, is that which embraces the height of land in question, viz: from the sources of Connecticut to those of the Chaudiere; and a copy of that portion is annexed to this essay. It is sufficiently clear that the description of the boundary in the Proclamation of 1763 could be derived, neither from the previous map of Evans which did not embrace that portion of the country, nor from Pownall's Map or topographical essay, which were both published for the first time in 1776, thirteen years after the Proclamation. As, if to reach the climax of inconsistency, it had been stated in the report, (page 9) that the former British and American agents had "both placed the question at issue upon grounds dangerous to their respective claims;" because it was not known to them

"that a *range of Highlands* corresponding with the terms of the treaty existed in a part of the territory which neither of the parties had examined, namely, south of the St. John, and lying in that oblique direction between the sources of the Chandiere and the Bay of Chaleurs. How far, that discovery due exclusively to the commissioners, may be said to have been unknown to the former British agents, will appear by the red boundary delineated on map A, and by the map reduced from the sketch of Messrs. Odell and Campbell. But I cannot see how the commissioners reconcile that assertion of the total ignorance, before they discovered it, of the said *range of Highlands*, either with the early knowledge of the Indian route from the St. Croix to Quebec, mentioned by Sir William Temple in 1668, and evidently referring to the height of land (pages 21, 22) or with their attempt to show that those Highlands which they have discovered are the same which were described by Pownall, in the Proclamation of 1763, and in the treaty of 1783.

It will be seen that Pownall's Map does not extend to the sources of the Penobscot, and does not embrace any portion of the two conflicting lines; and it appears from his topographical essay, that he had no personal knowledge or information respecting the nature of the ground along which either of those lines does run. When, therefore, he designates by the name of "height of land" the ground in which the Kennebec, the Penobscot, and the St. Croix have their sources, it is because, without knowing its nature, he knew that that ground divided or separated those sources from those of the St. John, and because the term "height of land," (as well as the synonymous term "dividing highlands") means nothing else than the ground, without regard to its character or elevation, in which rivers flowing in different directions have their sources, and which thus divides those rivers from each other.

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#### No. IV.

Extracts from the Report of Messrs. Featherstonhaugh and Mudge.

##### Charter of Massachusetts, 1691.

By this document the territorial rights of the old charter granted in 1606 to the New Plymouth Company, which had been forfeited were restored, and other territories annexed, as follows :

"The Colony of Massachusetts' Bay and Colony of New Plymouth, the Province of Maine, the territory called Acadia, or Nova Scotia, and

all that tract of land lying between the said territories of Nova Scotia and the said Province of Maine."

The tract of land here spoken of, and which had been called Sagadahoc, had been granted on the 12th of March, 1664, by Charles the Second to his brother, the Duke of York, and in that grant it is thus described :—

"Beginning at a certain place called or known by the name of St. Croix, next adjoining to New Scotland in America, and from thence extending along the sea-coast unto a certain place called Petuaguine or Pemaquid, and so up the river thereof to the farthest head of same as it tendeth northwards, and extending from thence to the River Kinebequi, and so upwards by the shortest course to the River Canada northward."

The charter of 1691 also contained the following reservation :—

"Provided always that the said lands, islands, or any premises by the said letters patent, intended or meant to be granted, were not then actually possessed or inhabited by any other Christian Prince or State." (page 14.)

But the royal charter of 1691, even if it had not been annulled in relation to Sagadahoc, by the treaty of Ryswick, furnishes no ground for a claim on the part of Massachusetts to go to the St. Lawrence ; the words of the charter are simply :—

"Those lands and hereditaments lying and extending between the said 'country or territory of Nova Scotia and the said river of Sagadahoc.' The furthest point, therefore, to which this north-western corner of Sagadahoc can be claimed, is the source of the river, which being the Kennebec River, is the point passed by the Highlands of the treaty of 1783, in north latitude 46°, or nearly so. This charter, then, gives no title beyond the head of that river." (page 17.)

By the charter of 1691, Massachusetts was forbid to issue grants in the Sagadahoc territory, it declared them "not to be of any force, validity or effect, until we, our heirs, and successors, shall have signified our or their approbation of the same." (page 18.)

No act of the British Government in relation to the annexation of the Sagadahoc territory to the Colony of Massachusetts' Bay, gave that colony a title to any part of it beyond the description contained in the charter of William and Mary (1691), viz : "all those lands and hereditaments lying and extending between the said country or territory of Nova Scotia, and the said river of Sagadahoc ;" which being construed as far as the sources of the Kennebec River, coincides with the most southerly source of the River Chandiere. (page 18.)

Grant of Nova Scotia to Sir W. Alexander, 1621.

That grant is described in the following terms:

“Omnes et singulas terras Continentis, ac insulas situatas et jacentes in America intra caput seu promontorium communiter *Cap de Sable* appellat. Jacen. prope latitudinem quadraginta trium graduum aut eo circa ab equinoctiali linea versus Septentrionem, a quo promontorio versus littus maris tenden ad occidentem ad stationem Sanctæ Mariæ navium vulgo *Sanctmareis Bay*. Et deinceps, versus Septentrionem per directam lineam introitum sive ostium magnæ illius stationis navium trajicient. quæ excurrit in terre orientalem plagam inter regiones *Suriquorum* et *Etcheminorum* vulgo *Suriquois* et *Etchemines* ad fluvium vulgo nomine Sanctæ Crucis appellat. Et ad scaturiginem remotissimam sive fontem ex occidentali parte ejusdem qui se primum predicto fluvio immiscet. Unde per imaginariam directam Lineam quæ pergere per terram seu currere versus Septentrionem concipietur ad proximam navium Stationem, fluvium vel Scaturiginem in magno fluvio de Canada sese exonerantem. Et ab eo pergendo versus orientem per maris oris littorales ejusdem fluvii de Canada ad fluvium stationem navium portum aut littus communiter nomine de Gathepe vel Gaspé notum et appellatum.”

Of this passage, we submit the following literal translation:—

“All and each of the lands of the continent, and the islands situated and lying in America within the headland or promontory, commonly called Cape Sable, lying near the forty-third degree of latitude from the equinoctial line or thereabouts. From which promontory stretching westwardly, towards the north, by the sea shore, to the naval station of St. Mary, commonly called St. Mary's Bay. From thence, passing towards the north by a straight line, the entrance or mouth of that great naval station which penetrates the interior of the eastern shore betwixt the countries of the *Souriquois* and the *Etchemins*, to the river, commonly called the St. Croix. And to the most remote source or spring of the same on the western side, which first mingles itself with the aforesaid river. From whence, by an imaginary straight line, which may be supposed (concipietur) to advance into the country, or to run towards the north, to the nearest naval station, river, or spring, discharging itself into the great River of Canada. And from thence advancing towards the East by the gulf shores of the said River of Canada, to the river, naval station, fort, or shore, commonly known or called by the name of Gathepe or Gaspé.” . . . . .

. . . The direction to follow the St. Croix to its westernmost sources is consistent with the very precise knowledge we now possess of the branches of that river. On the other hand, this direction to go to the westernmost sources of the St. Croix would appear to be without an ob-



ject, unless it were to get into the adjacent waters of the Penobscot ; and is it reasonable to suppose that the expression, "*versus Septentrionem ad proximam navium Stationem fluvium vel scaturiginem in magno fluvio de Canada sese exonerantem*," could mean that the line to the St. Lawrence from the sources of the St. Croix should be a due north line ; at a time when no information existed of the interior of the country to be traversed by a due north line ; and when it was not known whether there was a river or a naval station at the termination of that line ; there being in point of fact, neither the one nor the other ? Compelled, therefore, to believe that a line drawn due north from the sources of the St. Croix River is not in accordance with the description contained in the grant, we proceed to a more critical examination of the language of the grant.

The boundary line is first directed, as will be seen by reference to the map, to proceed from Cape Sable to St. Mary's Bay by a course towards the north (*versus Septentrionem*.) Now this course is laid down in the oldest maps, and is rightly so laid down in them, nearly north-west ; *versus Septentrionem* therefore here is equivalent to north-west. This is a fair deduction from the general description of the course, which is ; "*versus Septentrionem a quo "promontorio versus litus maris tenden ad occidentem*," stretching westwardly towards the north, the term for which is north-west. That "*versus Septentrionem*" is to be grammatically construed in connection with "*tenden*" is evident, since the course is not said to be east or west of north ; whilst if it were to be construed in connection with "*ab equinoctiali Linea*," it would only serve to explain what could never be doubted, viz., that Nova Scotia was situated north and not south of the Equator.

From St. Mary's Bay, the course is, in like manner, directed to run "*versus Septentrionem*," or north-west, across the entrance of the Bay of Fundy to the River St. Croix. And this is the true course as exhibited by the map.

But the next part of the course is not directed to be *versus Septentrionem*, but simply directs the St. Croix to be followed, tracing its course up the first stream which flows into it from its western bank, and up to "its most remote source or spring." And by referring to the map, it will be seen, that nothing but a local knowledge, surprisingly exact for the times, could have suggested a description so consistent with the hydrography of the country.

Having reached the most remote spring where the Land Portage begins, we find the old course, *versus Septentrionem*, or north-west, again enjoined, and directed to be followed by a straight line drawn in that direction to the nearest naval station, river, or spring, discharging itself into the great river of Canada. Such a course leads directly to the east

branches of the Chandiere, which are in the 46th parallel of north latitude, and on the ancient confines of Acadia. This, however, was a war grant, extending, as grants of that character sometimes did, to the St. Lawrence, to wit, to the nearest naval station in the Great River of Canada.

Now Quebec, nearly opposite to which place the Chandiere empties itself, is a naval station, and there is none other on the river, or even on the Gulf of St. Lawrence, for a distance of about 375 miles eastward, till we come to the Bay of Gaspé, which is spoken of in the grant as the next naval station. The evident intention therefore of the grant was, not to limit it by a due north line from the sources of the St. Croix, but a north-west line running from the westernmost waters of the St. Croix to a point in the St. Lawrence, opposite to Quebec. It cannot be denied that this interpretation of the language of the grant is consistent with a singularly exact knowledge, for the time, of the relative situations of the mouth of the St. Croix River, and of the head waters of the Chandiere; and that any other interpretation is inconsistent with any knowledge whatever of the interior of the country.

We consider also that this construction of the grant of Nova Scotia derives great weight from its being supported by ancient maps still extant. It would be deemed reasonable if it stood only upon its own merits; but confirmed as it is by Coronelli's map, dated 1689, of which the extract on map B, No. 3, has been already alluded to in a note at p. 12, we have conceived ourselves in duty bound to submit these observations with the collateral evidence to your Lordship. At the period when this map was published, the nature of the boundary of the Grant of 1621 must have been well understood, and if the western boundary of that Grant had then been considered to be a north line, from the head of the St. Croix, crossing the St. John and reaching to the St. Lawrence, it would have been so laid down on some of the maps, which we do not find it to be. On the contrary, the maps of that period, as we see by the instance quoted from Coronelli, carry a boundary line from the head of the St. Croix, in a north-westerly and westerly direction, to the head waters of the Chandiere, always south of the River St. John, and its progress westward, separating the head water of the Penobscot and Kennebec from the head waters of the Chandiere. The original map from which we have copied the extract No. 3, has an engraved dotted line running from the St. Croix to the Chandiere, the south side of which is edged with a red colour for the British Colonies, and the north side with a blue colour for the French colonies. At what period the mistake occurred which led to the erroneous construction found in so many maps, the effect of which is to carry a due north line from the sources of the

St. Croix to the St. Lawrence, we know not ; but it appears to have been subsequent to the year 1689.

This most erroneous protraction of Mitchel's map led us to examine and thoroughly to investigate the discussions connected with the original grant of Nova Scotia in 1621, and we so discovered, that all the reasonings advanced in the discussions upon the boundary described in the grant, were founded upon a translation of that grant furnished by the American documents, and that this translation had omitted to give the proper sense of that particular portion of it which governs the true construction of the boundary it describes, viz : "*Ad proximam navium stationem*," a point of the utmost significance ; for it may be that one reason for using the term "*proximam*" was to distinguish Quebec from Gaspe, which, as it respected the former, was to be considered as *ultimam*. And if this word "*proximam*" was significantly inserted in the original Latin, it seems to have been as significantly overlooked in the American translation. That translation is as follows :—

"All and singular the lands upon the Continent, and the islands, situate lying and being in America, within the head or promontory commonly called Cape Sable, in the latitude of forty three degrees nearly or thereabouts, from that promontory along the shore stretching to the west to the Bay commonly called St. Mary's Bay, thence to the north by a direct line crossing the entrance or mouth of the great Bay, which extends eastward between the countries of the Siriquois and Etchemins, so commonly called, to the river commonly called by the name of the Holy Cross, or the St. Croix, and to the furthest source or spring upon the western branch of the same, which first mingles its waters with those of the said river, thence by an imaginary direct line, to be drawn or run through the country, or over the land to the north to the *first bay*, river, or spring, emptying itself into the great river of Canada, and from thence running to the east, along the shores of the said river of Canada, to the river, bay, or harbour commonly called and known by the name of Gachepe or Gaspee."

It is to be observed of this translation, that all its inaccuracies are in perfect harmony as respects the results they produce, which are to turn away the attention of those who confide in it, from a literal interpretation of some very significant passages in the original Latin document ; and the practical effect is to obscure the description of the boundary, in such a manner as greatly to prejudice the British claim. In the first place we find in this translation, "*versus Septentrionem*," which, as has been shown, is strictly equivalent to north-west, rendered every time it occurs, by the words "to the north ;" so that by those words the readers of the translation must necessarily suppose a *due north line* to have been intended. Now, if the legitimate sense of "*versus*

*Septentrionem*," be a due north line, where the boundary is directed to leave the westernmost waters of the St. Croix, why is not the same meaning to be applied to the words "*versus Septentrionem*," in the passage of the grant where the line is directed to cross the entrance of the Bay of Fundy, and where the course must of necessity be *north-west*? But if the words "*versus Septentrionem*" in that passage were to be construed "*due north*," and the line were to be so drawn, that line would never reach the St. Croix River, but would pass forty miles to the east of it. The words "*versus Septentrionem*," therefore, must be rendered in both these cases in a consistent manner, and not in such a way as is totally opposed to the known bearing of the St. Croix River from St. Mary's Bay. The expression "*to the north*," in the American translation, is therefore clearly an incorrect interpretation of the original words "*versus Septentrionem per directam lineam*," or *towards the north by a straight line*; meaning that course which we have shown was north-west.

Next we have, "*ad proximam navium stationem, fluvium vel scaturiginem in magno fluvio de Canada sese exonerantem*," rendered "to the first bay, river, or spring, emptying itself into the Great River of Canada," as though any bay in the ordinary meaning of the word, viz. a place where boats could receive shelter, would fulfil the intention of the grant, and be a true rendering of the words "*proximam navium stationem*." If it be assumed that the intention of the grant was not to give a line of boundary taking its direction from the westernmost waters of the St. Croix, to a *known* roadsted or naval station, but merely to draw a due north line to the St. Lawrence, may it not reasonably be asked, why was not the line directed to run *ad Septentrionem in magno fluvio de Canada*? If such was the intention, the mentioning of a *bay* or a *river* was superfluous. It could not have been held important for defining the limits of the grant, that there should be either one or the other at the point where the boundary reached the St. Lawrence, if the boundary were to be a due north line continued till it struck the St. Lawrence. Neither was it known at that time that either bay or river existed in the part of the St. Lawrence to which the American translation would draw his line. The small unnavigable streams taking their rise from twenty to thirty miles south of the St. Lawrence and north of the St. John, were unknown at that period, and would not have been dignified with the name of rivers, had they been known, seeing that in our times, they serve only to float Indian canoes, and the pine logs which are sent down the streams to be manufactured into deals by the saw-mills constructed near their mouths. But if the intention had been to establish a line betwixt the westernmost waters of the St. Croix and the roadsted or naval station of Quebec, the words "*ad proximam navium stationem, fluvium vel scaturiginem in magno fluvio de Canada sese exonerantem*,"

would be full of significancy, since the Chandiere River and the roadsted or naval station of Quebec, are both there, to correspond accurately with the words of the grant.

We believe it will not be denied that the specific meaning of the word "statio," when referring to naval matters, is "*a roadsted where ships may ride.*" Upon this occasion, the words "navium stationem," clearly prove this to have been intended, and not any small bay or indentation on the river coast. Now, as there is not any roadsted to be reached by a due north line, and there is not even a safe anchorage in that part of the River St. Lawrence which such a line would strike, we are compelled therefore to choose between Quebec and Gaspé, each of which is "a Statio" in the sense of the grant; but Gaspé being twice as distant from the westernmost source of the St. Croix, as Quebec, this last must of course be considered the "*proximam stationem.*"

The same remark with respect to comparative distance, may be applied to the Chandiere, whose sources are nearer by one half, to the westernmost waters of the St. Croix than are any other sources of the small streams emptying themselves into the St. Lawrence, which could be reached by *a due north line.*

The American translation of the grant of Nova Scotia, which we have quoted, is an official one. It is printed in document 126 of the House of Representatives, forming No. 1., of the appendix to the message of the President of the United States, dated Washington, January, 1838, on the subject of the "Maine Boundary, Mr. Greely," &c.

#### Mitchell's Map.

On Mitchell's map, the Bay of Chaleurs is laid down one degree and forty minutes too far to the east in respect of longitude, and about forty minutes too far to the north in respect of latitude. This remarkable error perhaps deceived the American negotiators at the Peace of 1783; and the claim they now make to derive support to their "highlands" from the circumstance of the western termination of the Bay of Chaleurs appearing, upon Mitchell's map, to be only about thirty-five miles from the River St. Lawrence, is much favoured by this error. The true distance is nearer seventy-five miles. On the same map, the westernmost sources of the River St. John are laid down about thirty miles from the St. Lawrence, whilst the true distance is about sixty-two miles. A line drawn upon Mitchell's Map from the western termination of the Bay of Chaleurs to the westernmost branch of the St. Johns, would pass to the north of that river; and a line drawn upon that map from the easternmost branch of the Chandiere to the western termination of the Bay of Chaleurs, would, if agreed upon as a boundary, throw the

River St. John into the United States ; but a line drawn from the true geographical position of the western termination of the Bay of Chaleurs, to the westernmost sources of the River St. John, if agreed upon as the boundary, would throw that river far to the north of the boundary line, and therefore on the British side of it.

XV. With reference to the great errors of Mitchell's map in latitude and longitude, we have suggested some remarkable considerations resulting therefrom. We have observed that if a line were protracted upon that map between the most western sources of the St. John and the western termination of the Bay of Chaleurs, and were adopted as the Boundary between the two countries, the River St. John would fall to the south of that line, and be within the United States. Whereas by a line protracted between the above mentioned points, *properly adjusted as to the latitude and longitude* as they exist on our map, the River St. John would be left on the British side, and to the north of the Boundary between the two countries. But though we have referred to Mitchell's map for the purpose of showing how the mistakes in that map may have contributed to account for the erroneous opinions prevailing in the United States about the Boundary Question, we are quite aware that Mitchell's map is not, and cannot be any authority on this question : inasmuch as it is not mentioned or referred to, in any manner, in the Treaty. The Boundary must be determined by applying the words of the Treaty to the natural features of the country itself, and not by applying those words to any map.

#### Decision of the Commissioners under the Treaty of 1794.

We have thus a regular recognition of Massachusetts being bounded upon Nova Scotia, and of the most western waters of the St. Croix forming part of the boundary of Nova Scotia. And how was the duty of the Commissioners under the Treaty of 1794 performed?

Disregarding the obvious propriety of choosing the most western source of the river, they fixed upon the north branch ; and this in the face of the most extraordinary evidence against their proceeding. For the Scoodeag, which is the known Indian name of the St. Croix, runs from its most western source to its mouth, under the same name of *Scoodeag*, whilst its northern branch, which comes in at the upper falls, bears the separate name of *Cheputnaticook*. The westernmost sources of the Scoodeag are in a low, flat, lake country, consisting of many lakes running into each other, and hence the Indian name given to that part of the country and to the river ; for *Scoodeag* means *low, swamp meadow*. Now the very continuity of its name should have convinced the Commissioners of the impropriety of deviating from that line. But the

British Commissioner was overruled. He had, in conjunction with the American Commissioner, chosen an American gentleman, upon whose intelligence and integrity he relied, for the third Commissioner. This gentleman was, in point of fact, an umpire to decide all differences which might arise; and the American Commissioner having claimed a stream called *Magaguadavic*, lying still farther to the east than the Cheputnaticook, to be the true St. Croix, the British Commissioner consented to a compromise, the result of which was, that although they made a correct decision as to the identity of the St. Croix, they practically decided to adopt the north source, as if it had been the most western source. That these gentleman went out of the line of their duty, as prescribed in the Treaty of 1794, is evident; and much future expense and misunderstanding would have been saved, if their report had been restricted to the identification of the river. This will be seen by looking to the map.

The St. John, like all other large rivers, occupies the lowest level of the country through which it flows, and holds its course through a valley of considerable breadth, which below Mars Hill extends, in a modified manner, some distance to the westward of the bed of the river. The nearer a due north line could be brought to the St. John, the better the chance was that it would run up that valley, whilst the further it lay to the west, the greater was the certainty of its missing that valley and of its more speedily meeting the highlands of the country. And this has in practice proved to be the case; for the exploratory north line drawn from the monument, reached no highlands until it came to Mars Hill; whilst if the line had started from its true point, the westernmost waters of the *Scoodeag*, it would have reached the "highlands" about twenty-five miles south of Mars Hill, near to the point where they separate the St. Croix (a tributary of the Roostuc) from the waters of the *Meduxnakeag*, which flows into the St. John. These highlands are distinctly visible from the American post at Houlton, and are about fifteen miles, magnetic west, from that post. This deviation of the Commissioners from their duty, which has had a most unfortunate influence upon the settlement of this great question, was besides highly prejudicial in another respect to the British rights. If it should be ultimately assented to, it will lose to Great Britain more than one million of acres of land.

In 1798, an explanatory article was added to the Treaty of Amity of 1794, releasing the Commissioners from their obligation to conform to the provisions of the Vth article of the Treaty, in respect to particularizing the *latitude and longitude* of the source of the River St. Croix; and declaring, amongst other things, that the decision of the said Commissioners "respecting the place" ascertained and described to be the

source of the said River St. Croix shall be permanently binding "upon His Majesty and the United States."

Upon this, we beg to remark, that it has been made sufficiently manifest, that the Treaty of 1783 intended that the point of departure of the due north line should be at the westernmost source of the St. Croix, the description of the western limits of Nova Scotia having been regularly maintained unaltered in all the documents from the grant of 1621. The proceedings of Congress, also, as found in the secret journals, always speak of "*the boundary settled between Massachusetts and Nova Scotia*," and of the line being to be settled "*agreeably to their respective rights*."

To all these considerations, we add the important fact, that in the Vth article of the Treaty of Ghent, it is stipulated that the ascertainment of the north-west angle of Nova Scotia, is to be made "in conformity with the provisions of the said Treaty of Peace of one thousand seven hundred and eighty-three." A fact which further confirms the general obligation to consider the most western waters of the St. Croix, as the true boundary of Nova Scotia.

The irresistible conclusion then presents itself, that it is indispensable to the faithful execution of the 2d article of the Treaty of Peace of 1783, that the commencement of *the due north line* be drawn from the north-westernmost source of the St. Croix; and that whatever mistakes may have hitherto crept in, during the attempt to settle this question, the two Powers, in order to execute the Treaty, must at last go back to that point. It is true that Her Majesty's Government may be considered, looking to the explanatory Article, as pledged to abide by the decision of the Commissioners under the Treaty of 1794, yet this pledge was given before the proceedings of those Commissioners were known to be in violation of the Treaty of 1783, and when the nature of their compromise was not understood. That compromise was onesided in every respect. The acknowledgement that the river decided upon was the true St. Croix, could not have been avoided. The ample means of identifying it have long been public. But in return for that acknowledgement, Great Britain is asked, by the selection of a wrong point for the source of that river, to lose a territory of more than one million of acres of land, and has been subjected in consequence of that erroneous decision, to much expense and trouble, by the delay in the execution of the Treaty of 1783.

If then, the United States had ground for refusing to be bound by the adjudication of the King of the Netherlands, under the Convention of the 29th of September, 1827, which by article VII of the Convention was to be taken as "final and conclusive," because his adjudication was a compromise, and not a decision upon points submitted to him, and was not conformable to the conditions required by the Treaty of



1783, how much better ground has Great Britain to refuse its sanction to the proceedings of the Commissioners of 1794, now that they are discovered to be in violation of the Treaty of 1783, at the same time that they are the main cause of the difficulties which have lain in the way of the execution of that treaty !

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No. V

Extracts from the Arguments of the British Agent under the Ghent Commission.

The British Agent before the Commission of 1798, from whose arguments extracts have been given at large in the No. I of this Appendix, is the same gentleman who twenty years later saw cause to change his opinions, and who, as his Britannic Majesty's Agent under the Ghent Commission, did suggest in 1818, and sustained with great zeal, the new pretension on the part of Great Britain to place the north-west angle of Nova Scotia south of the River St. John. He was quoted as very competent authority of what was the prevailing understanding in New Brunswick, in the year 1798, and to show that, at that time, with the treaty and printed maps before him, and with a general knowledge of the country, he construed that instrument as every other person then did, according to its obvious and natural sense.

The following extracts, from his arguments before the Ghent Commission in 1820, 1821, will indicate the reasons by which he sustained that singular change of opinion.

"At Mars Hill there will be found a point of intersection of the north line with highlands fully answering the description in the treaty : there, it is conceived, is the point at which the north line ought to terminate ; for these lands are not only unquestionably the highest, but they are also the first that have been intersected by the north line ; and it would not only be unreasonable to pass over these to look for others, which, if found, would not so well answer the description, but would also be inconsistent with the meaning of the words used in the treaty, viz : "North to the highlands ;" which words are evidently to be understood as intending that the north line should terminate whenever it reached the highlands which, in any part of their extent, divide the waters mentioned in the treaty."

It is presumed that it will admit of no doubt that the true intention of that part of the treaty, now under consideration, was to secure to the

United States the objects solely which are above specified in this regard ; and that it was likewise the intention of this part of the treaty, to leave to his majesty the undisputed and undisturbed right and possession of and to all parts of the adjoining territory not intended to be included within the boundaries of the United States. This intention will be literally effectuated by a very small variation of the expression actually made use of in this regard, namely, by describing the second line forming this angle in the following words, that is to say, "along the said highlands where they divide those rivers that empty themselves into the River St. Lawrence from those that fall into the Atlantic Ocean." The expression actually made use of is, along the said highlands which divide the rivers, &c. For it is to be observed, that the north-west angle of Nova Scotia is distinctly defined before any mention is made of the circumstance of the highlands, which form a subsequent part of the boundary dividing the rivers mentioned, in that regard, in the treaty. And this circumstance, of the highlands dividing rivers, is mentioned, not as constituting a part of the definition of the term, but merely as matter of description, with the view of securing to the United States the sources of the rivers which empty themselves within the boundaries, as before stated. The words descriptive of the eastern boundary of the United States, are these : "East, by a line to be drawn along the middle of the River St. Croix, from its mouth in the Bay of Fundy, to its source ; and from its source, directly north, to the aforesaid highlands which divide the rivers that fall into the Atlantic Ocean from those which fall into the River St. Lawrence." These words, taken in their literal and individual signification, would involve a construction altogether inconsistent with other parts of the treaty, and with facts at the time within the knowledge of the framers of it ; and if the foregoing observations upon the first description of this part of the boundary be, as they are presumed to be correct, these words, descriptive of the eastern boundary, must, of necessity, be interpreted in a corresponding sense."

"The Highlands thus intersected by the due north line, lie in the general course and direction of a line drawn from the north-westernmost head of Connecticut River, along the well known and very elevated and conspicuous height of land forming the acknowledged and notorious landmark and boundary between the two nations, in that quarter which divides the Rivers Chandiere and du Loup, emptying themselves into the River St. Lawrence, from the rivers Penobscot and Kennebec, falling into the Atlantic Ocean. This well known height of land being the only highland which actually divides the rivers contemplated in the treaty to be divided by the boundary line therein described, as the undersigned agent has heretofore, in the course of these discussions, abundantly shown ; and this well known height of land being moreover found to

extend north-easterly in a direction towards Mars Hill, in a distinct and unbroken ridge, for many miles, and to be afterwards connected with Mars Hill by a succession of mountains and broken ridges of Highlands, intersected with ponds and streams, appearing to the eye, when viewed from various stations, to be an elevated and unbroken ridge, as the result of the surveys fully prove. No other point in this due north line, in any part of its extent, combines these various circumstances, exclusively of the other and fatal objections to adopting any point in this line, north of the River St. John, as the north-west angle of Nova Scotia. It seems, therefore, from these considerations, to result in demonstration, that the point where the said due north line strikes the Highlands at Mars Hill is the north-west angle of Nova Scotia truly intended in the treaty of peace of 1783.

“The true intention of the treaty, then, under all the acknowledged facts in this case, would clearly be ascertained by the following obviously plain and natural and nearly literal construction of its phraseology, namely: It is hereby agreed and declared that the following are and shall be, the boundaries of the United States, viz: from the north-west angle of Nova Scotia, viz: that angle which is formed by a line drawn due north from the source of the St. Croix River to the line of the highlands, along the said line and the highlands which divide,” &c.

“The force of this reasoning will be rendered more apparent if the boundaries of the United States, described in the treaty, be traced from west to east, instead of from east to west, as they are traced in the treaty, merely for the purpose of a more convenient description of them; for, it will not be contended that the quarter in which one may commence the actual tracing of a boundary, previously agreed upon, can make any difference in the boundary itself. Let then the tracing of the boundary, in this quarter, be made “from the north-westernmost head of Connecticut River along the Highlands which divide those rivers that empty themselves into the River St. Lawrence from those which fall into the Atlantic Ocean, to the north-west angle of Nova Scotia, viz: that angle which is formed by a line drawn due north from the source of St. Croix River to the Highlands.”

“In this case the only difference is, that the second line forming the angle is placed first in order in the description—there is no difference in the line itself. But it is the course or inclination of this line which is from the north-west angle of Nova Scotia, at the point of its intersection with the due north line, drawn from the source of the St. Croix.

“He, therefore, determined carefully to abstain from any reference whatever to any documents, maps, or plans, respecting the ancient or former boundaries of the Province of Nova Scotia, or to any of the proceedings before the commissioners under the 5th article of the treaty of

1794, or of those under the 4th article of the present treaty, although he had them all in his possession, because he evidently perceived that the merits of the business submitted to the consideration of this honorable Board, though they might have been incidentally alluded to, had never come directly under discussion on either of those former occasions; and, consequently, that any of the *obiter dicta* of the commissioners or agents of either government, in matters not in judgment before them, nor submitted in any manner to their investigation, could not any more than the *obiter dicta* of judges or council in any judicial proceeding, *alio intuitu*, in the courts of law, be cited as authorities in a case in which the merits of those occasional illustrations should become the direct object for investigation or decision; and it would obviously be most unreasonable if it were otherwise."

"And we here discover the accuracy and propriety of the peculiar phraseology, in the first description of the north-west angle of Nova Scotia, namely, that this angle is not in this description, designated to be that angle which is formed by a line drawn due north from the source of the River St. Croix, to the Highlands which divide those rivers which empty themselves into the River St. Lawrence from those which fall into the Atlantic Ocean, but merely to the Highlands. The framers of the treaty well knew, that this north line would never intersect any part of those only Highlands contemplated in the treaty; therefore the second line is described to be along the said Highlands, &c., and is strictly conformable to Mitchell's Map, in this regard. And as it has been accordingly incontestably established, that the line along the highlands intended by the treaty, should and must be a line south of the River St. John, it results in demonstration, that the north-west angle of Nova Scotia, designated in the 2d article of the treaty of peace, of 1783, is formed by a protraction of this line from the said highlands easterly, along the highlands, following the sources of the several branches of the rivers, above mentioned, falling into the Atlantic Ocean, and leaving the same within the territories of the United States, until such line, so protracted shall intersect a line drawn due north from the source of the River St. Croix; which point of intersection must, therefore, incontrovertibly be the north-west angle of Nova Scotia, required to be ascertained by this honorable Board, and the 5th article of the treaty of Ghent."

## NOTE EXPLANATORY OF MAPS.

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**Mitchell's Map.** The due north line is delineated on the original map, and extends to the River St. Lawrence. The residue of the colored line has been added on this transcript in order to show the limits of the disputed territory according to it, and that the negotiators of the treaty, had they so intended it, might with facility have described with precision the boundary claimed by Great Britain.

**Campbell's sketch of Highlands.** He has added Mr. Odell's views from Houlton, which are delineated in his survey of the Restook, a distinct map not inserted here, which is also filed with the proceedings of the Ghent commission.

**Province of Quebec, Northern Colonies from Military Atlas, and Bowen's Map.**

About thirty maps published in London subsequent to the Proclamation of 1763 were laid on the part of the United States before the King of the Netherlands, eighteen of which published before the treaty of 1783, show, like that of Mitchell, that the situation of the basin of the St. John, of the sources of the Penobscot, and of those of the tributary streams of the River St. Lawrence were known to the negotiators of the treaty. And all those, on which the southern boundaries of Lower Canada were laid down, either in conformity with the Proclamation of 1763, or with the treaty of 1763, place that boundary as well as the north-west angle of Nova Scotia on the highlands claimed by the United States. Those published before the treaty differ as to the western boundary of Nova Scotia, which was determined only by the commissions of the governors of that province; and these had not been made public.

The three maps given here were amongst those produced by the United States, and are a fair specimen of all: they have not been selected, but are those to which access could be had at this moment. Bowen, favoring the claim of the Crown against Massachusetts' Bay, has made the Penobscot the boundary between Nova Scotia and Massachusetts. In the map of the Province of Quebec the line from the source of the St. Croix to the highlands is not a straight line. In the

map from the Military Atlas (as well as in that of Pownall) that line is drawn from a small stream (called Cobscook) that falls in the western extremity of the Bay of Passamaquoddy. The reason for this is that, in the year 1765, the Governor of Nova Scotia, under pretence that this was the St. Croix, granted 100,000 acres of land to Governor Bernard, Pownall and others, west of the Scoodiac and extending to that pretended St. Croix; and Pownall placed the boundary on his map accordingly. Of the three maps, two place the boundary between Nova Scotia and Canada, east of the north-west angle of Nova Scotia, south of, or on the Ristigouche; and one places it north of that river. Similar irregularities are found on other maps. But they all agree, as above stated, in the general features of the country, and in placing the southern boundary of Canada and the north-west angle of Nova Scotia on the highlands claimed by the United States.

The map of Messrs. Featherstonhaugh and Mudge exhibits that "axis of maximum elevation of the whole country" which, in the report (page 40) they present "as the true highlands intended by the 2d article of the treaty of 1783, uniting to the character of highlands as contradistinguished from lowlands, the condition required by the treaty, of dividing the rivers that empty themselves into the River St. Lawrence from those which flow into the Atlantic Ocean, to the north-westernmost head of the Connecticut River." How far those true highlands fulfil the condition of dividing the rivers thus designated, the map shows. But, as to the axis aforesaid, it appears that a group of mountains, some peaks of which have an elevation exceeding 2000 feet, is found where the Tobique, which falls into the St. John, and some branches of the Ristigouche and of the Nipisiquit, both of which fall into the Bay of Chaleurs, have their sources; and that, in a south-westwardly direction and about 160 miles distant, another group of about the same elevation is found near the most southerly sources of the St. John and the opposite sources of the Penobscot. Those two groups are, in that direction, the two extremities of the basin of the St. John. The ground in both places falls rather abruptly near 1000 feet, and thence descends on both sides gradually, as it necessarily must, to the bed of the St. John about 120 feet above tide water. To an ignorant man, the whole line appears to be an inverted arch or irregular curve, of which the St. John is the lowest and the two groups of mountains, or extremities, the highest points: and the axis of that curve, or imaginary straight line, drawn from one of the extremities to the other, is in the clouds.

## ERRATA.

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*Page Line*

33,	37,	for their	<i>read</i> this.
67,	1,	" is	" it is.
76,	25,	" accompany this	" were annexed to the first American.
109,	6,	" to	" for.
132,	25,	" were	" was.
137,	2,	" definitely,	" definitively.
139,	36,	" Grant,	" Grant, or.
146,	34,	" is simply,	" is.
148,	19,	" proceeding,	" proceedings.
150,	15,	" they,	" the Commissioners.
165,	37,	" fort,	" port.

The maps accompanying this volume  
are in the University of  
Michigan Map Collection